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EQUALS ON THE VERGE OF DISAGREEMENT

IN DEFENSE OF INTRINSIC PROCEDURALISM

Pilvi Toppinen

ACADEMIC DISSERTATION

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This project has had its own paths. One way to tell its story starts from the notion that the role of equality in theories of democratic deliberation procedures puzzled me, and it took a few years to find a focus for this after my Master's thesis on Iris Marion Young's, Seyla Benhabib's, and Chantal Mouffe's conceptions of democracy and difference. What disturbed me was the fact that there was something blurry, something to be further analyzed in a systematic manner in order to understand better the dynamics between democratic procedures and equality. In addition, the questions connected to ideal and non-ideal theorizing in justifications of democratic procedures bothered me in relation to these themes. It also seemed that getting clarity on these relations would enable the employment of procedural deliberative theories in a more purposeful and informed manner.

Now, if I think back, I can see that a certain tipping point along this path were seminars and personal discussions with Jerry Gaus in 2005–2006 at the University of North Carolina/Chapel Hill's wonderful Department of Philosophy, and then, later, a few times in Helsinki as well. Jerry is an excellent teacher. He raised several difficult questions both in relation to texts that were already familiar to me, but which I had read from a different angle, and in relation to my own writings. He jotted an almost frustrating number of red marks in the margins of my texts. While Nordic egalitarian values have shaped my core intuitions, those questions of his have been vitally influential for this process in provoking new trains of thought. Jerry also gave me the valuable hint that Tom Christiano had a manuscript for the *Constitution of Equality* that might be following the same line of thought as I was. Besides, Jerry has been one of the most encouraging philosophical figures along this path, also stressing that, when it comes to philosophy, being quick does not matter very much after all; some of us need more time to mature our ideas. I owe cordial thanks to Jerry for all the support, friendliness, and generosity, for the letters of recommendation – and for those red marks in the margins.

Nonetheless, the ideas discussed in this thesis started to develop further, in a different form, in 2009–2010 when I was not working but taking long walks several times a day, which gave me the time and opportunity to brew up the composition of the thesis. Then I wrote some of the first versions of the critical parts. However, being merely critical did not seem sufficient – critique seemed to require a constructive counterpart, an alternative option: a coherent line of thought from the critical thoughts to substantial defense. Yet it was not until 2012 that my constitutive interpretation of intrinsic value got its first formulation in a paper for a MANCEPT Workshop on the Procedural Dimension of Justice. Inspiring and instructive discussions with the organizer of the workshop, Emanuela Ceva, at the University of Manchester, and later

also in Helsinki and Turku, and her brilliant writings, had a major influence on the further evolution of the work.

After 2011–2013, progress on the thesis was rather sporadic, as I took a completely different, full time professional role in the academic community in August 2013. But in late spring, early summer 2017, I dedicated three full months to the project and wrote the current version.

This thesis focuses on democratic deliberation, an indefinitely continuing process. During the process there are, nonetheless, occasional practical requests for decisions even if the deliberation has not reached its finale. In a somewhat similar manner, the development of these ideas into a more mature shape is an ongoing process, but this PhD thesis brings together and then unpacks the various themes that have been occupying my mind. During the final states of this thesis, the generous support I received from my supervisors Kristian Klockars and Eerik Lagerspetz has been truly valuable. Besides their highly useful comments, their encouragement has perhaps been even more important; they managed to convince me that it was time to regard the work as finished. I am truly grateful to both. Without Kristian and Eerik I would not have been able to submit this work. I also feel genuine gratitude to the official pre-examiners, Kasper Lippert-Rasmussen and Juha Räikkä, for their highly constructive comments, which also helped to convince me that the ideas were ready to be defended, meanwhile giving me invaluable insights about how to develop the work even further afterwards. I am also deeply honored that Kasper has promised to be my opponent in the public defense of this thesis.

The longer description of the path to this point should maybe start, however, from Kristian's and Susanna Snell's excellent seminar, Current debates in social and political philosophy, that I took during my Master's studies, which was ultimately very influential in the development of my thinking. While this thesis is not so much about Young, whose work I came across for the first time in the seminar, I do recognize now that Young's texts have affected my gut intuitions more than I realized. Even though I do not explicitly cite her work very much, the echoes of her thought can be heard throughout the composition. Later on, during my Master's studies and few times after, Tuija Pulkkinen's reading group, Politics of philosophy, and her philosophical views, also had a significant influence on my thinking. Furthermore, I might never have started on the path leading to this thesis without Heta Aleksandra Gylling. She strongly encouraged me to start PhD studies and offered me a place in her research project. Her determination also prompted me to go abroad for a while, and her advice has been valuable in relation to wide variety of themes.

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I dedicate the thesis to the idea of the Nordic welfare state.

Helsinki, January 2018
Pilvi Toppinen

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1 INTRODUCTION

[I]t [is not] clear how to arrive at a univocal answer to the question of what is a fair way of adjudicating conflicting demands that arise from conflicting moral viewpoints, where the very answer to what counts as such a fair way and indeed what counts as a reasonable answer may well be in dispute among such viewpoints.

— Steven Lukes (2003, 39)

Democracies are widely considered to be in a state of crisis, while even interpretations of proper democratic means provoke vibrant quarrels. Yet it is essential that we understand the grounds of democracy, for both critical and constructive purposes. Arguably, the means to deepen democracy or make it more legitimate depend on how democratic decision making is justified, but it seems that the normative complexity of deliberative theories that became popular in 1990s has potentially blurred the vision. The relationship between normative deliberative ideals and democratic practices is less straightforward than it might appear. That said, I do not wish to argue against the many valuable empirical studies of the ways we deliberate together, but, rather, to return to normative ground and ask what justifies democracy.

1.1 THE LURE OF PROCEDURAL

A major question for contemporary political philosophy is how heterogeneous values and moral and practical disagreement should be taken into account in pluralist societies. These are core questions for philosophical debates on democratic deliberation. As Thomas Christiano and Sameer Bajaj (2017) put it: “Deliberative democracy is a field of democratic theory that studies the contribution of public discussion, argumentation, and reasoning to the normative justification of democratic decision making”. Since the 1990s, theories of democratic deliberation have been one of the key themes in democratic theorizing – in studies that range from the highly practice-oriented to the theoretical.¹ Deliberative theories arise from the consciousness of pluralism and the idea that people who disagree with each other on fundamental concerns should nonetheless be able to make decisions together in normatively justified ways. The ideal of deliberative democracy refers to decision making by means of a collective public reasoning process, one that takes into account all the different points of view. The condition of

¹ The term “deliberative democracy” was first used by Joseph Bessette in his 1980 article, “Deliberative democracy. The majority principle in republican government.” The idea of making decisions via the public deliberation of citizens, however, is by no means new; quite the contrary.

disagreement lies at the heart of deliberative democracy, yet the relationship is complex. This is the space which this thesis explores.

Current democratic theory is torn in two directions: the aim of substantially just outcomes pulling it towards the epistemic pole, and political disagreement over its substance taking it in a procedural direction – although this proposed continuum misses something by virtue of its two-dimensionality. (By democratic procedures I refer to collective, political, decision-making practices.²) Interpretations of sources of value for democratic procedures vary respectively. Roughly put, “epistemic proceduralists” defend democratic procedures on *substantial grounds*, that is, because of their tendency to produce decisions that are “good”, “right”, or “just” according to certain independent standards; in other words, they place the main emphasis on the fairness of the outcomes. Decision-making procedures are seen as valuable because of the expected outcome, whereas both pure and intrinsic *proceduralists* put more emphasis on the values of democratic procedures and disagreement over the standards of justice of outcomes. “Pure proceduralists” would argue, for example, that something could be valuable just because it is a *product of certain procedures*, while “intrinsic proceduralists” defend the idea that *procedures can realize in themselves something valuable that would not exist independently of the procedures*. Yet these competing modes of justification – substantial and procedural – often provide a foil for each other and most views are hybrids of some kind. The essential difference between them typically lies in the weighting and valuing of the elements.

Non-constrained public use of reason as a way of making decisions is often considered a remedy both for a lack of rationality and a democratic deficit. Besides being free, deliberation should be equal. However, even though equality plays one of the elementary roles in the deliberative ideal, the relationship between deliberative democratic procedures and equality has remained rather ambiguous. What kind of equality is required, and why?³ The main contribution of this thesis is to clarify the role of equality in democratic deliberation procedures and in their justification.⁴ It seems to me that in order

2 By “democratic decisions” I refer to collective decisions that bind members of society and determine many important relations between them, such as rights, duties, liberties, what counts as crime, retribution, fair contracts, duties, ownerships, contributions to collective enterprises, redistribution, criteria of membership in a community, modes of exit, etc.

3 Despite the disagreements, conditions of political equality lie at the core of normative conceptions of democratic legitimacy. Charles Beitz (1989, 17) defines the role of political equality as “serv[ing] as the chief regulative principle of democratic political competition by defining fair terms of participation in it”. Theorists disagree, however, when specifying the content of this regulative principle: “Its content admits of a variety of interpretations, each corresponding to a particular understanding of ‘fair terms of participation.’”

4 What is the difference between democratic legitimacy and justification? In this thesis the distinction does not play a role, yet typically normative political legitimacy can be interpreted as relating to political authority, coercion, or political obligations. If interpreted as a justification for authority, it

to understand deliberative proceduralism, and attain a better recognition of how to facilitate the conditions for democratic deliberation, one should understand in a more detailed manner the kind of equality upon which deliberation builds, and why equality is relevant for democratic deliberation procedures in the first place. The answers to these questions vary, and the three prominent views analyzed in Chapters Two, Three, and Four, as well as the fourth variant suggested in Chapters Five and Six, each provide a different perspective upon the theme.

The increased attention to democratic theories since the early 1990s has been at least partly motivated by growing awareness of the cultural and political pluralism brought to the fore by globalization. Deliberative theories with a strong procedural emphasis seemed to offer a potential solution to the challenge of pluralism. Yet, as it has turned out, the tension between procedures and substance is one of the core difficulties in the deliberative framework. Different procedural approaches discussed in this thesis differ in how they interpret the relationship between democratic deliberative procedures and substantial values such as justice. Some see justice as constituted in the deliberative process (justificatory proceduralism, Chapter Two), some understand deliberative processes as means to indicate a form of justice that is independent of procedure (epistemic proceduralism, Chapter Three), while, for others, justice is realized in the procedures themselves (intrinsic proceduralism, Chapters Four, Five, and Six).

In this thesis I bring together three key types of procedural approaches and provide an evaluation of the prominent versions of these approaches as defended by Joshua Cohen, David Estlund, and Thomas Christiano. I study the relationship between procedures and substance in each, analyze their strengths and weaknesses, and ultimately defend a further variant of the third: a minimal interpretation of intrinsic proceduralism. Analysis of these procedural approaches also encapsulates the different stages of the procedural debate. Cohen's approach is an exemplar of the 1990s' phase, Estlund's and Christiano's approaches summarize the relevant themes of the next phase, whereas the intrinsic phase is currently ongoing.

Two of the main themes connected with deliberative procedures are the idea of public reasoning and a strong commitment to public equality, to acknowledging each other as equals in the public political realm (see Peter 2017b). This thesis analyses the relationship between substance and procedure in light of the roles of equality and practical disagreement, thereby clarifying these relations and bringing key tensions to the fore. While the democratic

references the difference between *de facto* authority and legitimate authority. Understood in relation to coercion, it is taken to justify the use of coercive power: how rightful use of political power constitutes political authority. Historically it has been an element of legitimate political authority entailing political obligations. Nonetheless, I wish the minimal intrinsic proceduralism defended later in this thesis, to be robust enough to stand up to various interpretations (Peter 2017a especially section 2; for a more detailed analysis on the topic see also Ripstein 2004).

procedures discussed here are mainly deliberative (albeit occasionally incorporating discussion of democratic procedures on a more general level), it is arguable that the same considerations apply to democratic procedures more generally (although that is not reviewed in this thesis). As I see it, a deliberative focus with an emphasis on free and equal public reasoning and justification procedures makes these relations and tensions more apparent; certainly, the intrinsic worth of democratic procedures becomes more perceptible in a deliberative context.

Before going into greater detail, a few words are required to delineate the types of answer I seek. I do not concentrate on current electoral institutions of democracy, for instance, but on the ideals that lie behinds those institutions.⁵ Further, I concentrate on views that employ the idea of democratic deliberation as part of political decision making, leaving out those employing deliberation as a device for defining what is just on a more general level. In contemporary societies the justification of democratic procedures should be open to different conceptions of good, and not dependent on potentially controversial value commitments. In other words, the justification should be *nonsectarian*. It should preferably also have a wide reach and be robust in relation to contingent elements. Furthermore my approach here is partial (cf. Robeyns 2008) in the sense that I do not offer a systematic enquiry into how democratic decision making is related to other domains of society.

A pertinent element of democratic procedures is a condition of disagreement. Many contemporary political philosophers, who theorize about decision making in the face of disagreement, focus on normative conditions for legitimate democratic procedures for *reasonable* decision-makers. The assumption of reasonability is widely shared among deliberative democrats and epistemic proceduralists, as well as among liberal theorists more generally (e.g., Cohen, Estlund, Rawls, Barry, Scanlon, etc.). Furthermore, the emphasis tends to be on *solving* disagreements between these reasonable actors. On the other hand, some theorists take conflictual power dynamics and irresolvable differences as their starting point, regarding democratic procedures as offering a way to reduce antagonism. This group is composed of what could be called conflict theorists, who are sceptical towards to idea of moral objectivity (e.g. Hampshire 2000; Honig 1993; Mouffe 2000), and Hobbes-inspired realists (see, for example, Bellamy 1999; Gray 2002), yet what both groups have in common is skepticism about difference-solving and an attention to

5 Sen (2009, 322–323) distinguishes between the “institutional structure of the contemporary practice of democracy” that is “largely the product of European and American experience over the last few centuries” and the ideals of democracy. He defends the idea that democracy is a universal value. The institutions of electoral conflict, such as competitive elections, secret ballots, political parties, etc., are simply the means to institutionalize fundamental ideals of “political participation, dialogue and public interaction” (ibid, 326) that Sen sees as universal in their appeal. When the institutions of electoral conflict are seen merely as the means to attaining the latter ideals, then it becomes clear that their presence does not prove that a satisfactory level of democracy has been achieved.

conflictual dynamics. However, assuming either reasonability or endemic conflict has left the area lying between them understudied. Obviously the two poles encompass the major part of the matter, yet this space between presents vital viewpoints addressed by the form of intrinsic proceduralism defended in this thesis (see also Ceva 2011, 2016; Christiano 2008.)

1.2 THREE ROLES OF DEMOCRATIC PROCEDURES

Approaches to relations between procedural and substantial aspects vary in terms of justification of democratic procedures and the role accorded to democratic deliberation. The three approaches discussed in the first part of the thesis (Chapters Two–Four) all take a different perspective, which I refer to as justificatory, epistemic, and intrinsic respectively. None of them defends pure proceduralism, the idea that democratic procedures could be independent of all substantial elements. The first – Cohen’s ideal, discussed in Chapter Two – is what I regard as a mainstream deliberative view. He defends the notion of *mirroring*, according to which there is an ideal deliberative process; democratic legitimacy rests on the idea that actual social and political institutions should mirror the ideal situation and hence attain legitimacy, because they seem to replicate what people agree on ideally. In Chapter Three I analyze Estlund’s *template view*, according to which the ideal deliberative situation should be used as a template with which an actual deliberative situation should be compared. Finally, in Chapter Four, I discuss Christiano’s *wide view on deliberation*, according to which deliberation processes are conditioned by practical disagreement and therefore it is essential to focus on procedural equality. In the second part (Chapters Four–Six) I discuss intrinsic proceduralism, meaning that discussion of Christiano’s approach is also the first chapter of this latter section.

Before outlining the content of the chapters, a few words about some basic questions and distinctions behind the themes discussed is timely. I do not directly discuss whether there exists a “moral truth” or some other substantial, morally fundamental standard of “good” or “just” that could be known (I substitute “truth” for “moral truth or some other fundamental moral standard” in the interest of abbreviation; I assume a certain moral objectivism, but take no stance on metaethical debates concerning the nature of moral truth; furthermore, I also assume practical disagreement over content⁶). Rather, I

6 John Kekes (2000, 5) has distinguished various senses of pluralism (see also Ceva 2016, 27). According to him pluralism “may be ontological, having to do with the ultimate constituents of reality; epistemological, concerning the standards of reasonable belief; axiological, pertaining to the values that make lives good; anthropological, regarding the cultural forms that human lives may take; or political, advocating arrangements that recognize the legitimacy of many conceptions of a good life”. By practical disagreement I refer to a similar idea that Ceva discusses under the label “actual pluralism”. She defines actual pluralism as axiological and anthropological and, moreover, with political implications. In

discuss whether such a substantial standard is independent or dependent on the democratic deliberation process. If the standard is dependent on the process, what kind of relation is there between the two? Some, *substantially* inclined scholars (see, for example, Estlund 2002, 6–7) hold that there is a certain substantial, procedure-independent standard according to which democratic outcomes can be evaluated, whereas others, *procedurally* inclined, hold that there is a standard, but it is not independent of deliberation procedures. Another question is whether the standard is accessible in practice and, connected to that, whether democratic decisions tend to be right on the basis of it. Some deliberative theorists, defending a substantial, deliberation-independent standard, maintain that outcomes of proper democratic procedures *track* that substantial standard; they claim that if members of a demos deliberate, they are more likely to realize the moral standard than if they do not. According to this approach, the tracking potential is what motivates the deliberation process (see Estlund 2008, 173). These questions are intertwined with that of whether the relationship between deliberative process and moral standard is considered an indicative or a constructive one. Theorists who understand deliberation as collaborative reasoning often interpret ideal deliberation as an indicative process when it comes to “truth” (understood broadly as a substantive moral standard). An ideal collaborative reasoning process is seen as an instrument for approaching this moral standard (see Estlund 2008). Others conceive of a public deliberation process in a more constructivist way, with some defending a “weak” interpretation according to which there is a deliberation-independent moral standard and others advocating the “thicker” interpretation that deliberation-independent moral standards do not exist. According to this latter interpretation, moral “truth” (or some other moral standard) can be attained only via a specific ideal deliberation procedure. These questions are connected to the role of ideal deliberation in relation to actual democratic procedures.

In Chapter Two I analyze Joshua Cohen’s deliberative ideal, introducing the main themes of the debate that will be deepened in later chapters. While Cohen defends the role of actual democratic participation, he justifies democratic procedures on the basis of hypothetical consent given under ideal conditions, namely, in an ideal deliberative situation. Thus he locates the source of legitimacy in the idea of public reason and in a theory of democratic participation. This formulation is particularly interesting because it is one of the paradigmatic philosophical deliberative accounts and, moreover, both procedural and substantial simultaneously. In Cohen’s approach, ideal deliberative reasoning as a core of the deliberative process has a sort of four-dimensional character; it functions as an ideal but also as something that

practical circumstances in contemporary societies people are loyal to different values and value systems which affect their interpretations and how they assign weight to different justifications and reasons. Actual pluralism does not presuppose a commitment to incommensurability concerning moral truth, for example.

actual democratic practices should mirror. It is also a unique combination of procedural yet substantial elements: deeply procedural, yet involving a hypothetical substantial element. Nonetheless, I argue that this justificatory version of deliberative proceduralism has its complications in relation to disagreement and inclusion, especially because of the consensus requirement and that of mirroring the ideal decision-making procedure in the actual democratic setting. The practical limitations of the deliberative setting, such as limited knowledge, limited cognitive resources, and time, also play a part in this, as I maintain in Chapter Two. Although Cohen's ideal highlights the relevant features of ideal democratic procedures, the substantial basis of the ideal does not appear robust. Furthermore, Cohen's interpretation of procedural values seems too thin to serve for justificatory purposes, while it is not clear why procedural and substantial elements should be considered jointly, as Cohen suggests (see Chapter 2.4).

The third chapter has a more substantial take on procedures, focusing on the epistemic proceduralism that Estlund defends in his *Democratic Authority: A Philosophical Framework* (2008).⁷ Estlund challenges the purely procedural justifications of democracy and defends the importance of substance, maintaining that if it is available it should have primacy over procedures. According to Estlund, abiding by mere procedural fairness is always a retreat from substance. He argues that the challenge of political disagreement is not sufficient reason to reject all procedure-independent standards. He seeks to combine as many epistemic elements as possible with those of procedures. Political authority is not built on the actual correctness of decisions, he claims, but on a *procedure's tendency to produce just decisions*. The normative essence of the view lies in the idea of public reason: legitimate political authority must be based on justifications that are acceptable to all reasonable – or, as Estlund prefers – qualified points of view. The idea of normative consent forms the basis for his account of democratic legitimacy (see also Peter 2017a). However, while he himself questions whether alternative procedural versions succeed in justifying actual democratic deliberation procedures, it seems that his own view is prone to the same criticism because of the hypothetical nature of the justification and the instrumental role given to democratic procedures. Another relevant question concerns whether there is enough substance available to justify considering democratic equality as unnecessary. Besides defending epistemic proceduralism, Estlund also convincingly argues against purely procedural alternatives. He asserts that there is no such thing as pure procedures, that all procedures involve substantial commitments. Nevertheless, he also argues against hybrid views that combine both epistemic and procedural elements.⁸

⁷ Other proponents of epistemic proceduralism include José Luis Martí, Cheryl Misak, William Nelson, and Fabienne Peter among others. See, for example, *Episteme* 5/1 2008.

⁸ Estlund considers fair deliberative proceduralism (the label that he uses to refer Christiano's view, for example) the "most important competitor" for his own approach (Estlund 2008, 67).

According to Estlund, these views are both unstable and also unable to explain the role of democratic deliberation. In the later chapters of the work my aim is to counter these epistemic criticisms, in addition to those which are instrumental.

Chapter Four introduces intrinsic proceduralism – the topic of the latter half of the work – via Thomas Christiano’s approach. As Christiano observes (2015b), democracy can be evaluated either by reference to outcomes or, intrinsically, by reference to the inherent qualities of the process: on the basis of “whether there is something inherently fair about making democratic decisions on matters on which people disagree”. By intrinsic proceduralism I refer to the idea that procedures can be valuable as such, *in addition* to their instrumental value. Christiano’s approach starts with practical conditions of disagreement, fallibility, and cognitive biases, and proceeds to argue for procedural equality. In other words, his theory is motivated by practical disagreement.⁹ If these practical limitations of decision making are taken into account, he argues, then democratic procedures should treat all members of society as equals. One main challenge for this type of hybrid view, however, which rests on a procedural footing, lies in explaining the nature of deliberation. I discuss Estlund’s criticism of non-epistemic approaches, according to which proceduralists must rely on procedure-independent criteria in order to avoid argument based on leveling down. Yet it seems that the basis of argument relies on too thin an interpretation of procedural equality, which should be regarded as sensitive to context and the matter that is distributed. Another critique of this sort of approach questions the role of deliberation. How could public deliberation be justified on the basis of democratic equality? Christiano defends a *wide view* of deliberation, according to which participants should not limit their justification by a narrow notion of reasonability, but instead defend their views on the basis they personally consider the most compelling. Some have claimed that Christiano’s view is too idealistic, but its advantage seems to be that the relation between the ideal and the aspirational (i.e., what is aspired to) varies both from Cohen’s justificatory and Estlund’s epistemic version, in that there is less difference between the two levels. As I argue, this is one of the benefits of Christiano’s intrinsic view. One question that remains indeterminate here is the currency of equality. Christiano defends equality of wellbeing but even if his version of intrinsic proceduralism were otherwise defended, it seems that one could support other types of equality. This will be discussed in part 4.5.

In the fifth chapter I diverge in order to analyze the idea of intrinsic value. The main point for an intrinsic proceduralist approach, and for this thesis, is to show that democracy can be understood in a plausible and meaningful way as a good in itself (in addition to its potential instrumental value), and,

9 It seems that practical disagreement is one connecting element of those favoring intrinsic proceduralism (see also Ceva 2016, Ch. I), even if, as Christian Rostbøll (forthcoming) emphasizes, disagreement is a contingent factor, not a reason to favor the intrinsic view as such.

furthermore, that the value of democratic procedures plays an essential role in democracy's justification. Chapter Five considers potential strategies for reaching this aim. On the basis of this exploration I maintain that *democratic procedures can be justified intrinsically as constituting egalitarian relations*. Here the version I defend differs from Christiano's view. Moreover, I argue that this relational egalitarian justification can avoid both instrumental and epistemic challenges, and simultaneously be non-sectarian because of the constitutive justification. Essential for the latter is that democracy creates something unique that cannot be understood independently of its procedures: something that does not exist without democracy and something that we can understand only by referring to democratic institutions and practices. This unique idea, constituted by democracy, is a non-instrumentally just way for people to relate to each other in a democratic society. In the course of discussion I build on the recent work of Emanuela Ceva, Christian Rostbøll, and Niko Kolodny among others.

In the coda, Chapter Six, I briefly draw the various lines together and reflect on the effects on deliberation of minimal intrinsic proceduralism and constitutive justification. In doing so, I lean heavily on Ceva's recent work (2016). Her concept of *interactive justice* matches my intuitions concerning how deliberative procedures should be interpreted from the perspective of intrinsic proceduralism. To describe the objective of Chapter Six, it seems to me that the defense of intrinsic proceduralism should aim at minimalism in a justificatory sense; in other words, it should aim at principles that, as far as possible, could be independent of particular ethical outlooks, conceptions of good, and other value commitments. This would enable its wide applicability, especially since the scope of this thesis merely entails democratic procedures rather than a broader framework. Nevertheless, with regard to the possibility of objectivity, my attitude is not anti-foundationalist, relativist, or skeptical.

In order to clarify the idea of minimal intrinsic proceduralism I study democratic deliberation from that perspective. Some of the themes to which intrinsic proceduralism gives rise have been studied in the field of peace studies (see Ceva 2016); however, the primary focus of theories of deliberative democracy is on decision making, whereas theories of conflict management aim to change dynamics from antagonistic to co-operative. Typically, deliberative theorists are also interested in procedures, but for epistemic or justificatory reasons. Consequently, the deliberative ideals they discuss are outcome-oriented in their justification even if procedural, while the deliberative procedures are designed with an eye to outcomes – to just decisions. However, as I will argue, a switch of the focus and re-interpretation is needed when these procedures are interpreted from an intrinsic perspective, especially the conditions of consensus and the narrow notion of reasonability discussed in earlier chapters. In the sixth chapter I maintain that *the focus of deliberation should be shifted from consensus to understanding disagreement as a shared condition*. As Ceva emphasizes, antagonistic conflict dynamics are unjust because they prevent members of society from co-

operating on morally acceptable terms. Ultimately, I maintain that the deliberation process can be interpreted in terms of interactive justice, which refers to regulated democratic procedures guided by principles of procedural equality (Ceva 2016). Democratic interaction procedures should be inclusive and characterized by relative equality.¹⁰

1.3 METHODOLOGICAL FRAMEWORK – IDEALIZATIONS IN DEMOCRATIC THEORIES

The approaches discussed in this work accord the notion of deliberation different functions, employing it in the search for the ideal solution and/or in guidance for practical decision making. They vary in how ideal deliberation is defined and how it is related to practical democratic procedures. Indeed, debates on democratic deliberation procedures frequently fail to lock horns because wide variation in definition blurs the terms of discussion. In order to understand these dynamics, a few comments on the role of idealizations are of assistance. These following insights concerning normative analysis are particularly relevant to discussions of isomorphism between ideal and actual deliberation in Chapters Two–Four (see especially parts 2.3.2, 3.3.2, and 4.4). (By isomorphism I refer to the notion that ideal and actual deliberation should resemble each other, one that I problematize later in the work.)

Political philosophy is a form of applied philosophy very broadly understood. Christiano and Bajaj (2017, 383) assert that philosophical theorizing about deliberative democracy is applied in two distinct ways: philosophers should be able to give a manageable description of the problem under discussion; they should also be able to adjust, rethink, and redesign normative principles in a way that is sympathetic to the nature of the political contexts under evaluation. Therefore, the relationship between universal ideals and empirical reality is methodologically relevant to this study. Some theorists work in a *top-down* fashion, whereas others prefer a *bottom-up* style when examining the relation between theory and empirical reality. As Kasper Lippert-Rasmussen (2017, 8) describes, top-down approaches first seek out the basic, non-contingent philosophical principles, and then study their practical implications. The more naturalistically minded maintain that philosophy should start from empirical facts. In the case of democratic theory, starting from the middle seems fruitful. The aim remains to seek out general principles, yet these should be informed by, reflected upon, and revised on the

¹⁰ Yet I do not wish to defend relational equality as a monistic project. Along the lines suggested by Lippert-Rasmussen (2015), I prefer to consider egalitarian justice as a pluralistic account, in which a luck egalitarian dimension concerning questions related to distribution plays a role too. Although, in this thesis, the focus is on the intrinsic value of democratic procedures, relational equality plays an essential role.

basis of continuously growing practical knowledge of human beings and society.

Gerald Gaus (2016, 22) writes: “All principle-based theories ‘worth our attention’ are sensitive to their social realizations.” Following this line of guidance, I do not wish to discuss abstract ideals as such, even if they offer interesting philosophical questions. Why is that? Gaus (2016, 12–13) points to some relevant worries:

Dream ... is unrelated to the pursuit of justice in nonideal social worlds. [It is a] view of ideal justice that not only proposes an unattainable ideal, but is willing to admit that this ideal may be, and often is, entirely irrelevant to improvements in justice in nonideal conditions. ... [P]olitical philosophy that is unable to describe any but the top, ideal social state, is of little use in helping us sort through the options for justice that confront us. It is as if we have developed a clear conception of the ideal square, but are unable to say which of three drawings, a square, a rectangle, or a circle, is closest to it.

These problematic elements are related to broader, general questions concerning normative theorizing and how it should be applied in the political sphere. Idealizations describe an ideal, something that is *contra* factual, and something to which to aspire. Normative ideals have various functions: they can be used as theoretical devices for evaluating the desirability of practices such as behavior or institutional arrangements; they may provide justificatory purposes; and they can be regarded as prescriptive – that is, action guiding – models that agents or institutions should seek to resemble. This latter function requires (at least some kind of) feasibility in terms of the ideal.¹¹ The justificatory function of the theories discussed in this work also requires that the justification should fit its intended scope. These dimensions are relevant when considering normative democratic ideals. Even though I criticize certain views on the basis of their prescriptive potential, I definitely do not wish to deny that there is a need for ideal normative theorizing. Ideal theorizing (without feasibility constraints) enables creative critical thinking and thought experiments, which are valuable tools. Giving up all ideal theories in the name of feasibility could lead to an unbearable degree of realism from which hope is absent. Starting with feasibility constraints in mind imposes excessive limits on the imagination. Furthermore, what seems unfeasible at first sight might ultimately emerge as feasible after all. The practical limitations of a particular ideal might turn out to be flexible. Yet it seems that it is definitely an asset for a normative ideal focusing on democratic procedures if it is somewhat feasible in the end, or takes into account the core features of the sphere for which it is destined.

¹¹ The meaning of this is currently topical. For example, Gilabert & Lawford-Smith (2012) have developed an interesting test according to which the feasibility of normative political theories and their potential for implementation can be assessed on various levels between the ideal and non-ideal.

Rawls has famously stated that normative political theories should be “realistic utopias”: “utopias” so that ideals are appealing and “realism” so that they are feasible (Rawls 2001, 4–5). Yet the feasibility does not have to be direct, that is, something that can be performed under current circumstances. Instead, what may be more interesting is diachronically indirect feasibility: something that might be brought about after something else has been achieved. This requires, nonetheless, that both of these “somethings” are within the scope of natural human ability, as defended by Mark Jensen (2009). Thus, a state of affairs can be feasible even if it is not possible to bring it about in the current conditions, as long as the path to that situation could be accessible under other conditions.

There are two sorts of constraints to feasibility relevant here: *hard* and *soft* constraints (or *strong* and *weak* as they were originally labeled in Räikkä 1998).¹² Hard constraints, such as logical, nomological, physical, and biological constraints, rule out a possible state of affairs permanently. Soft constraints are more complicated; they rule out nothing permanently, but render a state of affairs comparatively less feasible. Cultural, economic, institutional, psychological, and motivational constraints limit the likelihood of certain outcomes, but the limits are not permanent or absolute. Soft constraints are often probabilistic; the infeasibility in question does not mean strict impossibility, but, rather, that the probability of a particular state of affairs occurring is not very high. They are also malleable. They vary over time, for example; something that is infeasible now can be more feasible in the future or vice versa. Current constraints can be overcome and things can transform, sometimes in a more predictable, sometimes in a more imaginative or even strange direction. Soft, malleable constraints are interesting, especially for political philosophy. As Holly Lawford-Smith and Pablo Gilabert (2012, 815) maintain, “not including them leads to impotent idealism seeking desirable but extremely improbable outcomes”. Yet, as they note, psychological and motivational constraints are complicated, and it is not clear how they should be interpreted. Pathological psychological constraints are clear, but what about other psychological factors? Normative theorizing should not collapse into cynical realism, as normative theories can serve in the process of changing people’s desires and behavior. On the other hand, as Lawford-Smith and Gilabert put it, “whether a proposal might succeed, it seems crazy not to factor in citizens’ resistance or political apathy, even when these fall short of pathology” (Lawford-Smith & Gilabert 2012, 813; see also Räikkä 1998; Robeyns 2008.)

Soft constraints are certainly crucial when considering equality of opportunity. Even if there are no hard constraints on equality of opportunity in a given situation, soft constraints might be responsible for causing a certain amount of friction (cf. friction in economics) leading to inequality even in the

¹² “Hard” and “soft” constraints used by Lawford-Smith & Gilabert (2012) refer to a distinction made by Juha Räikkä in his 1998 article. The original labels used by Räikkä are “strong” and “weak”.

absence of hard constraints. It seems to me that friction is a beneficial concept in understanding feasibility and malleability in political contexts, and when considering empirical exploration of actual equality of opportunity on a large scale.

When evaluating normative political ideals, on the one hand one can question whether the ideal as such is desirable or appealing; on the other, whether it could serve as an aspirational ideal. Could the ideal be approximated, sought after? In many cases these questions are intermixed, yet they are separate sets of questions: the ideal as ideal, and the ideal as something to aim for. An ideal could be a desirable aim in certain ideal conditions, but ill-fitting to current non-ideal circumstances. Some ideals might even have devastating consequences if applied under certain kinds of non-ideal conditions. Even if the theorist in question limits application of the ideal in either of these dimensions, theories can and often do have a life of their own in the hands of others. Therefore it is a matter of good scientific practice to communicate intended uses of theorization clearly, specifying what complications there might be if it is applied to other contexts. This theme will be relevant to all the ideals discussed in this thesis.

One more relevant point to consider is a theme discussed under the labels of *best* and *second-best*. If the ideal or best alternative is for some reason unreachable, what state of affairs should one then aim for? What would the second-best alternative look like? It is not an easy task to identify second best.¹³ As Juha Räikkä notes (2014, 33), “The option that may seem to be the second-best before further investigation need not actually be the second-best.” The task involves not just identifying both a coherent and desirable state of affairs, but also recognizing potentially competing alternatives and ensuring that the selected state is the second, not the third or fourth best, and, furthermore, figuring out justified reasons for ordering these “ordinal bests”. That is complicated. What seems on first sight to be the closest approximation of the best might actually turn out to be rather distant after more detailed analysis.¹⁴ A large part of the work in this thesis is essentially about identifying

¹³ David Wiens (2016) refers to Lipsey and Lancaster’s classic theorem of the second best, updating it slightly: “if one of the principles that characterize a fully just state of affairs remains unsatisfied, then the best state of affairs under the circumstances does not necessarily satisfy as many of the remaining principles as possible.” And additionally (2016): “the theory of second best poses a stiff anti-approximation warning: if a political ideal remains unrealized, then an approximate realization of that ideal is not necessarily the best thing under the circumstances”. Wiens notes, however, that isomorphism between theorem and normative political analysis has not been studied thoroughly.

¹⁴ There are different ways to order the approximations of an ideal alternative if it is unreachable, depending on what types of principles are used as a basis for the ordering. Räikkä (2014, 33–38) distinguishes (1) a condition-based conception of approximation; (2) a degree-based conception of approximation; and (3) a denial-based conception of approximation. According to a condition-based approximation the number of conditions for an ideal situation that can be reached is relevant, i.e., the more conditions reached, the better. For a degree-based conception, the greater the degree to which the

the second best, and discussing and evaluating different intuitions related to that.¹⁵

The role of idealization in normative political theories is currently actively debated using a plurality of pairs. Laura Valentini (2012), for instance, identifies three dichotomies: (1) full compliance versus partial compliance theory; (2) utopian versus realistic theory; (3) end-state versus transitional theory. Alan Hamlin and Zofia Stemplowska (2012) identify four different dimensions: (1) full versus partial compliance; (2) idealization versus abstraction; (3) fact sensitivity versus insensitivity; and (4) perfect justice versus local improvements. As Gaus notes, philosophy is unfortunately often messy, and these different pairs and dimensions are intertwined in many discussions related to these themes (Gaus 2016, Ch. 1). Therefore, while it would be nice to have sharp definitions and limited dimensions in play in this thesis, that does not happen, although these dimensions are present in the analysis, some implicitly, some more explicitly.

This is why political philosophy also carries an ethical burden: because of its practical subject. In the case of normative theorizing in political philosophy, even if the resulting ideals are not meant to be applied in practice, the probability that this will be done, maybe without understanding the consequences, is higher than in other areas of philosophy. Therefore, one should pay attention to the level of clarity, and also to explaining explicitly if and why ideals should not be applied and what kind of risks could be involved in their application. Ingrid Robeyns expresses concern (2008, 360) in relation to the dangers of ideal theories in a stronger tone:

[Ideal theorists] sometimes play with real-life examples that create the false impression that their theories could be applied in nonideal circumstances, where the idealizations are not a reality. I think that the dangers of not being much more explicit about the kind of theory one is producing, and whether or not it can be applied to the real

ideal can be reached, the better, whereas a denial-based conception would advise behaving as if there were no obstacles preventing the attainment of the ideal. However, it often seems that it would be better to be sensitive to obstacles, rather than denying their existence. These principles hint at intuitively interesting considerations to be taken into account. Yet, as Räikkä has argued, using them as a basis for choosing a second-best alternative is rather complex. Since they are rather simplistic, and rarely a match for practical choice situations, they provide a rather unreliable basis for decisions (Räikkä 2014, Ch. 3; see also Brennan & Pettit 2005 for a slightly contrary view). Nonetheless, understanding the wide variety of relevant elements can assist in analyzing the complexities related to ideals and aspirational alternatives and offer a better understanding of the role of ideal deliberation, how it is related to practical contexts, and how these vary in different approaches.

¹⁵ Räikkä points out (2014, 33) that the problem of second best is not only relevant for public decision-making and the ideal realm; a lot of everyday decision-making also involves considerations of second best. Let us say, for example, that I order a cup of clear, unflavored tea in a café; if that is not available, in a second choice between Earl Grey tea and a juice I would select the latter, as I am not a huge fan of bergamot in my cup of tea.

world, are dramatically underestimated. These dangers include potentially harmful policies and actions in the real world, but also a counterproductive development in the literature on theories of justice, where scholars are talking at cross-purposes and where limited time and energies are directed towards developing critiques that are missing the mark.

This reflects the responsibility that normative theorizing about elements of the practical realm brings with it. This responsibility carries perhaps the most complex components related to research integrity for the normative theorist. Which questions are to be discussed at a universal level; which should be kept closer to the context? What practical limitations are relevant; what are irrelevant? This interplay is complex, and often there seems to be no single right choice. Evaluating whether one is idealizing responsibly is complicated, as are comparisons between theories operating on different levels of idealization. Hence, I should note that sometimes, when I am critical of certain theories, it might be that they are not shown in the best light from the perspective I have chosen and there might be good reasons to approach the subject differently. This possibility notwithstanding, the theories I have chosen to discuss here all highlight some vital elements for the thesis.

1.4 TOWARDS PROCEDURAL VALUE

Mainstream deliberative proceduralism has been very influential both among philosophers, and also within the more empirical political sphere. Epistemic proceduralism has lately emerged as perhaps the most popular approach in the field, with intrinsic proceduralism offering a less common alternative.¹⁶ There might be several empirical reasons for this: firstly, the latter does not properly fit common taxonomies currently used as heuristic tools to perceive the horizon of alternative forms of proceduralism; it might also initially appear tautological to some, as if one were claiming democracy to be valuable because it is democratic. Furthermore, most attempts to defend the idea that democracy has intrinsic value seem to be prone to instrumental or epistemic critique. One might understand the essence of procedural equality in a thin format, as prospective fairness, for example.

That said, a few accounts that employ a constitutive form of justification have recently been published. In this study, I refer to recent work by Ceva (2016), Rostbøll (forthcoming), and Kolodny (2014a & b). I personally also suggested constitutive understanding as an alternative strategy in an early sketch in 2012, even though it did look quite different back then.¹⁷ The minimal

¹⁶ Even the most recently revised (summer 2017) entry on political legitimacy (Peter 2017a) in the Stanford Encyclopedia of Philosophy refers briefly to Kolodny and Christiano when discussing pure proceduralism, but not intrinsic proceduralism.

¹⁷ In a paper given at MANCEPT 2012, University of Manchester, UK.

intrinsic proceduralism that I defend in this thesis combines a number of different elements, especially those from two recent accounts: Rostbøll's non-instrumentalism (forthcoming) and Ceva's interactive justice (2016) that is discussed in more detail in Chapters Five–Six, although the view I defend differs slightly from those of both of these scholars.¹⁸ Additionally, the way in which this thesis combines the analysis of Cohen's, Estlund's, and Christiano's theories in defense of intrinsic proceduralism is unique. As I see it, analyses of all these theories are valuable as such, and, in combination, draw a larger picture of the different ways to understand the relationship between procedures and substance in current democratic theories.

The points I make at the end concerning intrinsically revised deliberation are not surprising. As I see it, however, the framing of the question and the combination of the themes enable better understanding of how these points relate to justification of democratic procedures. They also illuminate the fundamental elements of justification in relation to deliberative procedures. The thesis combines what I understand to be the most relevant current philosophical perspectives from which to consider the interplay of procedural and substantial themes in a democratic context. The thesis also provides theoretical insights that could be employed for more empirical approaches.

I defend here the thesis that democratic procedures can have intrinsic value – value that is not merely outcome-oriented or instrumental – and that they are special in the sense that they can have intrinsic value in addition to instrumental value. I do not argue here that other kinds of procedures could not have intrinsic value, yet Martha Nussbaum's parody of a procedure-oriented mindset is thought-provoking. Nussbaum (2006, 83) caricatures a procedure-oriented theorist in her example of a cook in love with her pasta machine:

[I]t seems to the outcome-oriented theorist as if the cook has a fancy, sophisticated pasta-maker, and assures her guest that the pasta made in this machine will be by definition good, since it is the best machine on the market. But surely, the outcome theorist says, the guests want to taste the pasta and see for themselves.

Nussbaum's example points towards a common view that procedures are mere machines, valuable only instrumentally because of their outcomes; and that even thinking otherwise is somehow comical. In the case of the pasta-maker it seems that the outcomes dictate. However, whether would one rank for example the value of the Japanese tea ceremony, the Way of Tea, according to

¹⁸ In relation to Rostbøll's Kantian non-instrumental freedom argument, I seek more minimal normative commitments. I would consider it an asset if the approach had a certain robustness in relation to normative ethical theories. Ceva's defense of procedural theory of interactive justice focuses broadly on conflict management and interactive justice in the political sphere. But her theory also covers many of the themes discussed in the latter parts of this work in which her views are influential. These are discussed in Chapters Five and Six. See especially 5.5 for reflection on the differences.

the taste of the tea seems like a slightly different question, although there is an instrumental element present, of course. The tea ceremonies are described as a “Way” in Zen arts, and hence they do involve an instrumental element. They are paths to enlightenment. At the same time the Way can be translated as “the inner essence of reality”. According to Zen the enlightenment can be interpreted as emptiness or nothingness. “Efforts to master the intricate discipline of tea ... constitute a process of self-realisation, whereby one so thoroughly incorporates the form that it ... no longer requires one’s conscious attention.” (Kondo 1985.) Nonetheless, there is also the rituality that is not outcome-oriented. The Way of Tea *creates* a ritual domain, a distilled form of experience (Kondo 1985). I am obviously not suggesting that the relational equality of citizens constituted by democratic procedures should be considered parallel with the Way of Tea. I simply wish to raise the salience of procedural value by suggesting how procedures might also have intrinsic value in addition to their instrumental, consequential value.

2 COHEN'S PROCEDURAL AND SUBSTANTIAL IDEAL DELIBERATION

2.1 INTRODUCTION

This chapter analyses the version of the deliberative ideal first defended by Joshua Cohen in his 1989 article "Deliberation and Democratic Legitimacy". In it Cohen introduces what now seems like a mainstream philosophical view of the deliberative ideal, one which is deeply procedural yet involves a hypothetical substantial element. It combines components from the Rawlsian¹⁹ and Habermasian frameworks into a new and original view, thereby bringing the two major theoretical perspectives of the political philosophers of the previous generation into the sphere of democratic theory. Before implementing deeply proceduralist Habermasian elements, Cohen (1986) defended a more epistemic approach, but after positing ideal deliberative reasoning as a core of the deliberative process, his view became a unique combination of the procedural and substantial (Cohen 2009a).

In Cohen's deliberative proceduralism, substantial and procedural elements are tied together into a deliberative ideal (an ideal that is to be applied to democratic politics). His work has had a major influence, not just on political philosophy but also empirical research. However, even though I value his work highly, and its underlying motivation even more, I take a critical approach to his formulations here. I argue that the substantial basis of the ideal does not appear robust enough, and yet according to Cohen himself the procedural values are, as such, too thin for justificatory purposes. Furthermore, actual democratic deliberation seems in the end disconnected from the hypothetical justification. It also seems questionable that justification of procedures and justification of outcomes should be connected in the way Cohen suggests.

Nonetheless, Cohen's view is not just one of the major versions of the deliberative ideal; it also highlights many of the issues that are relevant for my thesis. Therefore Cohen's deliberative ideal and the questions it provokes function effectively as a background for the later chapters of this study, setting the stage for the questions discussed. What is the role of procedures and substance in deliberative views? How are they related? Can the democratic process be radically democratic or does it necessarily rely on procedure-independent standards? This chapter and Chapters Three and Four form the first part of the thesis, analyzing three different kinds of procedural understandings of democratic deliberation and justification. Chapter Four plays a double role, as it is also the first chapter of the second part of the thesis,

¹⁹ A historically interesting detail is that Cohen was a student of Rawls.

which focuses on procedural equality and the possibility of intrinsic worth of democratic procedures.

2.2 THE IDEAL OF DEMOCRATIC DELIBERATION

Deliberative democracy refers to decision making via a public, free, and equal deliberation process. It is an ideal model for organizing the collective exercise of power in the major institutions of a society, enabling decisions concerning the wellbeing of its members to be made by free and equal public reasoning processes between citizens.²⁰ Democracy is understood as a process of practical reasoning of citizens, a form of communicative rationality. The deliberative ideal depicts members of society as committed to solving their common, shared problems via reasoning (see, for example, Cohen 1989). As Jürgen Habermas writes (1996[1992], 285): “We need not confront reason as an alien authority residing somewhere beyond political communication.”

Since the 1990s theories of democratic deliberation have more or less dominated democratic theorizing.²¹ Deliberative ideas have been discussed at various levels, all the way from very practice-oriented studies to the theoretical.²² Many have used bold wording, such as “a change of democratic paradigm”, “a democratic turn”, or “a crisis of democratic theory”, to describe the theoretical move of the focus (see, for example, Sandel 1996; Benhabib 1996a; Fraser 1997a; Shapiro & Hacker-Cordón 1999; Dryzek 2000; Shapiro 2003; Mouffe 2000 etc.). Yet, even with a less grandiose attitude, this growing theoretical interest in discursive ideals of decision making might be interpreted as a sign that these questions are considered relevant for

²⁰ Even if I use language that references the nation-state decision-making context (e.g., “citizen” and “society”), I do not claim that democracy belongs merely to nation states or refers only to decision-making at a national level. As I see it demos can take place in various contexts from local to global, with certain context-dependent conditions, and this definition is one essential horizon of democratic theorizing. It is crucial to discuss the scope of decision-making, especially for deliberative views, as many deliberative theories define demos *functionally*, i.e., requiring that decisions should be made by *all those affected*. This functionalist definition of demos is distinguished from the *territorial* definition i.e., from defining demos as a certain territory, such as a nation state with borders. Defining the borders of demos is also complex in practice. It could be said that the relationship between territories called democracies and democratic decision-making is paradoxical, as the borders of so-called “democracies” are not defined democratically, but by violent means. Yet I will not discuss questions related to defining demos in this work – although fundamental and all-encompassing, opening that horizon here would take us away from the focus of this work (for more on these themes see, for example, Dahl 1989; Dryzek 1990; Held 2000; Shapiro & Hacker-Cordón 1999; Young 2000, 236–270, etc.)

²¹ As mentioned in the introduction, to my knowledge the term “deliberative democracy” was first used by Joseph Bessette 1980.

²² Empirical research on the effects of different kinds of deliberative settings is currently a vast field in political science.

contemporary conditions of moral and cultural pluralism within societies and other democratic decision bodies.²³ The questions arise from the realization that people with different world views and moral convictions should make decisions together, not just despite each other, and that the decisions should somehow take into account the wide variety of viewpoints. Implementing multiple perspectives in a joint reasoning process has also immense creative potential.

Deliberative theories are often explained in comparison to an ideal called “aggregative democracy”²⁴ defended, for example, by social choice theorists²⁵ (e.g., Bohman & Rehg 1997, ix–xiii; Cohen 1989, 17; Estlund 2008, 87–88; Dryzek 2000; Kymlicka 2002, 287–290; Shapiro 2003; Young 2000, 18–23; Elster 1997[1986] among others.) The ideal of aggregative democracy refers to decision making via a process of aggregation in which individual votes are combined and the option gaining more votes than the others is chosen. As Jon Elster (1997[1986]) describes, aggregative models conceive of democracy as similar to a “market” of rational agents choosing maximum satisfaction for their already fixed preferences. Both of these ideals, aggregative and deliberative, are procedural in the sense that they focus on the idea of democratic procedures instead of institutional structures or practices of actual decision making. They also share some basic elements of democracy: the principle of *the rule of law*; voting as a means of decision making (albeit according to the deliberative ideal that it is to be used only when reaching consensus is impossible); and basic rights and liberties such as freedom of expression, association, and assembly. They differ, however, in their understanding of the role of public reasoning and also in interpretations of rationality and even some convictions concerning the possibility of objective normativity. Yet deliberative theorists maintain that the elements of the deliberative ideal that differ from the aggregative ideal are the most important for achieving legitimate decisions in plural societies, as will be discussed below. The focus in this thesis is on the differences between types of proceduralisms that accord an essential role to deliberation;²⁶ in particular, on the kind of role that deliberation plays in different types of procedural views and how it is justified.

²³ I do not claim that pluralism as such has increased; rather, that awareness of it has grown.

²⁴ Some use also label “interest group pluralism” (e.g., Bohman & Rehg 1997), but, as Iris Young has emphasized, this is misleading as the ideal does not necessarily involve vindication of pluralism or even interests that are thoroughly (2000, fn. 5).

²⁵ Steven Wall (2000, 225) labels James Buchanan, Anthony Downs, William Riker, and David Truman as defenders of this kind of ideal which employs elements of Schumpeter’s elitist view and rational choice theories. Robert Dahl’s egalitarian account also favors aggregating even while differing from more social choice theory orientations (Bohman & Rehg 1997, x–xiii.)

²⁶ I will not discuss the aggregative type of proceduralisms further here, but the references in the previous footnote offer a good starting point.

Although many deliberative theorists do defend voting as a means of decision making, especially in situations in which consensual decisions are not reached, they argue that the role of voting in their formulation differs from that in aggregative approaches. In a deliberative framework voting is seen merely as a pragmatic means to decide in cases in which a decision has to be made even if agreement has not been reached, whereas the discussion and deliberation prior to that comprise the main driving force. The aim of an open dialogical deliberation process is to shift individual preferences in a more reasoned and justified direction, one taking into account the various viewpoints affecting the decision. As deliberative views seek the best reasons for decisions, the latter are not merely the result of a majority vote. Instead, the ideal decision-making process arrives at consensual decisions made with mutual understanding of the diverse multiplicity of all the relevant viewpoints (see for example Young 2000, 18–23; Cohen 1989.)

2.2.1 COHEN'S JUSTIFICATORY VIEW – BOTH PROCEDURAL AND SUBSTANTIAL

[R]adical democracy – understood as an effort to combine values of both participation and deliberation – has promise to be a distinctive form of democracy, in which the informal public sphere and conventional democratic institutions are reshaped by their connections with participatory-deliberative arrangements for solving problems. (Cohen 2009b, 263)

Joshua Cohen is a key developer of the idea of deliberative democracy (see also, for example, Seyla Benhabib 1996b, 2002; Amy Gutmann & Dennis Thompson 1996; John Dryzek 1990.) His approach is what I, in this work, take as a paradigm case for the mainstream deliberative ideal. He combines elements from the liberal democratic ideal and an emphasis on individual rights with the republican ideal that focuses on citizenship and public dialogue. More specifically, he has taken elements from both Rawlsian and Habermasian frameworks and incorporated them into his own conception of democracy. In particular, Cohen's view builds on Rawls' idea of public reasoning and his method of reflective equilibrium, a process of deliberation aiming at coherence between particular beliefs and coherentist justification in the contexts of liberal society,²⁷ and on Habermas' ideal of communicative

²⁷ Rawls' reflective equilibrium describes a state of balance. It refers to a theoretical method that can be used in order to square particular judgments with broader normative theory in order to find coherence between them. The method was originally developed for logic by Nelson Goodman for the purpose of coherentist justification of particular judgments and general rules. Rawls later applied this method to normative moral philosophy. The core idea of the Rawlsian application is that the reflection process changes both specific judgments and broader theory so that reflective equilibrium between them can be achieved (see, for example, Rawls 1999[1971], 18–19, 40–45; Daniels 1979.

discourse.²⁸ Even if both Rawls and Habermas have later discussed these themes in more detail themselves, it was Cohen who first brought the themes to these discussions and, more importantly, applied the elements concurrently in building his own ideal of democratic deliberation to serve as a source of public justification (Cohen 1989).²⁹

Cohen's conceptualization is particularly interesting from this perspective since it is both a paradigmatic philosophical deliberative account and yet it specifically emphasizes both procedural and substantial elements; indeed, he maintains that they are joined, observing, "Procedural and substantive values come ... as parts of a package" (1994, 591). The central part of democracy is not just equal treatment of citizens, that is, decision-makers, but the joint process of reasoning together as equals and relying on this common reasoning as a basis of justification. "A deliberative conception puts public reasoning at the center of political justification" (Cohen 1996, 99). This process is not only an instrument for achieving more just outcomes, but "a way to realize in actual political life an ideal of justification through public reason-giving" (Cohen 2009a, 8). Thus for Cohen, the legitimacy of democratic decisions emerges from the role of reason-giving, that is, mutual justification that is reached via the deliberation procedure. Cohen also emphasizes that his deliberative ideal is a *political* ideal in distinction to an all-encompassing moral outlook.

Cohen maintains that democracy is above all free and self-determining. He explains (2009a, 10) that "deliberative democracy has strong roots in a radical democratic tradition". He regards democracy as a fundamental political ideal

²⁸ Habermas maintains that substantial ethical standards are no longer available in contemporary plural societies. Habermas' main project has been developing an account of normativity that arises from the structure of human capacities. According to his discourse-theoretical view, only those norms or normative arrangements that have been accepted by all parties in the ideal discourse situation are binding. This is the key idea behind deliberative ideals in political philosophy. Later, in the wake of many others, he also applied the idea to democratic theory. There are many similarities between Habermasian and Rawlsian views, but Habermas' view is more democratic in the sense that he denies that philosophers have some sort of special knowledge of where ideal discourse might lead. For Habermas the key is the ideal discourse of actual people. In other words, the discourses constitute the outcome that does not exist prior to them. In Habermasian thought ideal and real discourses might not resemble each other. Real discourse should proceed according to norms that would ground the assumption that they have been unanimously accepted in ideal discourse, but the norms might be very different from those guiding the ideal discourse (see, for example, Habermas 1996[1992], 1996).

²⁹ Cohen's view is also more "democratic" than Rawls' – this is the Habermasian part of his account. By this I refer to the point that the ideal requires actual reasoning between citizens, whereas Rawls' account is built on his standard of public reason, something that is not constituted by a democratic process of reasoning among citizens. As Benhabib (2002, 108) has argued, "public reason in Rawls's theory is best viewed not as a *process of reasoning* among citizens, but more as a regulative principle, imposing certain standards upon how individuals, institutions, and agencies *ought to reason about public matters*. The standards of public reason are set by a *political conception of liberalism*." (See also Quong 2013.)

that is itself a source of value, not a derivative ideal that could be explained via other values. He argues (1996, 102) that “deliberative democracy provides a form of autonomy: that all who are governed by collective decisions ... must find the bases of those decisions acceptable”. However, although Cohen accentuates the role of actual deliberation and the mutual justification achieved in a form of consensus, the acceptance required is after all hypothetical. He maintains (1997[1989], 73) that “outcomes are democratically legitimate if and only if they *could* be the object of a free and reasoned agreement among equals”. The key to Cohen’s deliberative ideal lies in this hypothetic public procedural justification.³⁰

To emphasize this core element of Cohen’s view, in comparison to other formulations discussed in this thesis, namely epistemic proceduralism and intrinsic proceduralism, I label Cohen’s approach for the purposes of this work, *justificatory proceduralism*.³¹ The ideal reasoning process is the source of justification. The core of the view is that democratic decisions gain their legitimacy via the ideal public deliberation process.³² The justificatory view also provides an interesting point of comparison with epistemic proceduralism and intrinsic proceduralism. (This is not to be confused with justificatory minimalism, discussed in Chapter Six, which focuses on the scope of justification rather than procedures.)

As noted, justificatory proceduralism combines procedural and substantial elements. Cohen maintains that his deliberative democracy reaches beyond mere proceduralism, because it accepts what he calls “the ‘fact of reasonable pluralism’ – the fact that there are distinct, incompatible understandings of value, each one reasonable, to which people are drawn under favorable conditions for the exercise of their practical reason” Cohen (1996, 96). Reasonable pluralism functions not just as a limit for outcomes of the procedure, but also as a way to bring more substantial elements into frame. Additionally, it is used to introduce relevant considerations about the stringency or weight of demands imposed on agents by their convictions. (Cohen 1989, 1994, 1996.)

³⁰ Often the ideal process is also determined “by all the affected”. Yet the question of scope of democratic decision-making opens up a complicated debate since it is extremely difficult to determine who are affected by decisions and to what extent. In this work, however, I pass over that debate (as far as possible). Yet the question of the scope of demos is one of the relevant themes to consider when democratic decision-making in a globalized world is discussed (see also, for example, Goodin 2003, Benhabib 1996a; for a critical view see, for example, Lagerspezt forthcoming).

³¹ In a recent review article Christiano and Bajaj (2017, 383) label Cohen’s view the *rational consensus conception* and evaluate it as “perhaps the most prominent moral conception of deliberative democracy”.

³² There are many other prominent theorists whose approaches also build on public justification, including Gaus. Yet for Gaus the scope of legitimate decisions is much narrower (see, for example, Gaus 1996.)

The role of equality in the Cohenian deliberative ideal is rather complex, even ambiguous, I would say. Cohen emphasizes (2009a, 6) that the equal treatment of people in the decision-making process was one of the key themes at the beginning of his work on deliberative theories. He is interested in the kind of implications that equal treatment would have both on democratic procedures and outcomes and, furthermore, how it captures both the procedural and substantive dimensions of decision making. However, he also explicitly maintains in a later text (2009a, 6), the mere “treating people as equals” seems to him “thin” and “too limited to serve the central normative role” – which resembles a worry that theorists defending epistemic conceptions often highlight (see Estlund’s critique of intrinsic proceduralism in Chapters Four and Five). Cohen has even described an earlier version of his approach as “an epistemic conception of democracy” (1986), although he also sees (2009a, 7) that an epistemic conception is not enough as such, as it is “missing something about democracy as a fundamental political value”.

2.2.2 CONDITIONS OF THE DELIBERATIVE IDEAL

Cohen states (1989, 17) that deliberative democracy means “roughly, an association whose affairs are governed by the public deliberation of its members”. The deliberative ideal is an abstract model that combines an intuitive idea of democratic co-operation and a more substantial view and is thus both procedural and substantial at the same time. It is based on an intuitive idea of a society in which the conditions of co-operation are justified in a dialogical process of reasoning between equals. Deliberative democracy institutionalizes this intuitive ideal of political justification. Cohen describes democracy as an association in which citizens commit to mutual decision making and, above all, to sharing their reasons with each other. He writes (1989) “[d]emocratic deliberation is about reason-giving to others as equals”. In a dialogical deliberation process citizens present their ideas or suggestions for solving common problems or fulfilling legitimate needs. The arguments presented in this process are also intended to convince the other participants of their legitimacy.

This ideal dialogical reasoning process is defined by certain institutionalized normative rules. These rules set the deliberative ideal apart from democratic vices such as manipulation, propaganda, brainwashing, or strategic negotiation, and also function as limits to the autonomy of a deliberative society. They set the stage for democratic decision making. The deliberative ideal is constituted of equal, public, and open deliberative decision making, and also rules and institutionalized procedures that condition deliberation, thereby simultaneously enabling deliberation. Essential to the ideal is that the outcomes of deliberation are legitimate “if and only if they could be the object of a free and reasoned agreement among equals”, as already mentioned above (Cohen [1989]1997, 73). Most of all the ideal deliberative procedure should enable this.

Cohen describes these rules of deliberative democracy as a combination of formal and substantial conditions. The formal conception describes an account of the ideal and can be characterized via five features (F1–F5) (Cohen 1989, 21–22):

F1 A deliberative democracy is an ongoing and independent association, whose members expect it to continue into the indefinite future.

Deliberation is understood not just as mere face-to-face dialogue in a certain place and time, but as an ongoing, never-ending process at various levels of society. According to most deliberative theories this dialogue takes place in numerous contexts, not just in certain institutions, even though the actual acts of law-making might do so. It is also expected that relationships between people can be complex, mediated, and multiple (see also Habermas 1996a, 296–307).³³

F2 The members of the association share (and it is common knowledge that they share) the view that the appropriate terms of association provide a framework for or are the results of their deliberation. They share, that is, a commitment to coordinating their activities within institutions that make deliberation possible and according to norm they arrive at through their deliberation. For them, free deliberation among equals is the basis of legitimacy.

F3 A deliberative democracy is a pluralistic association. The members have diverse preferences, convictions, and ideals concerning their own lives. While sharing a commitment to the deliberative resolution of problems of collective choice (D2), they also have divergent aims, and do not think that some particular set of preferences, convictions, or ideals is mandatory.

F4 Because the members of a democratic association regard deliberative procedures as the source of legitimacy, it is important to them that the terms of their association not merely be the results of their deliberation, but also be manifest to them as such. They prefer institutions in which the connections between deliberation and outcomes are evident to ones in which the connections are less clear.

F5 The members recognize one another as having deliberative capacities, i.e., the capacities required for entering into a public

³³ Democratic theories can be split between *centered* and *decentered*. In centered models democratic decision-making is at least implicitly understood as taking place in a certain institution or institutions, such as at a small local meeting (see, for example, Barber 1984); whereas in decentered models democratic processes are understood to occur in various contexts of the public sphere and even in more private arenas as well (see, for example, Benhabib 2002; Bohman 1996; Andrew Arato & Jean Cohen 1992; Joshua Cohen 1989; Habermas 1996a; Young 2000).

exchange of reasons and for acting on the results of such public reasoning.

This formal ideal is given substance by Cohen's outlining an ideal deliberative procedure that states the conditions for deliberative decision making. According to Cohen (1989, 21) the substantive account of an ideal procedure "captures the notion of justification through public argument and reasoning among citizens, and serves in turn as a model for deliberative institutions". It is these substantial requirements (below) that connect the formal ideal (above) to democratic institutions. The ideal procedure consists of the following four conditions (I1–I4) (Cohen 1989, 22–23):

I1 Ideal deliberation is free in that it satisfies two conditions. First, the participants regard themselves as bound only by the results of their deliberation. Their consideration of proposals is not constrained by the authority of prior norms or requirements. Second, the participants suppose that they can act from the results, taking the fact that a certain decision is arrived at through their deliberation as a sufficient reason for complying with it.

I2 Deliberation is reasoned in that the parties to it are required to state their reasons for advancing proposals, supporting them, or criticizing them. They give reasons with the expectation that those reasons (and not, for example, their power) will settle the fate of their proposal. In ideal deliberation, as Habermas puts it, "no force except that of the better argument is exercised" (1975, p. 108). Reasons are offered with the aim of bringing others to accept the proposal, given their disparate ends (D3) and their commitment (D2) to settling the conditions of their association through free deliberation among equals. Proposals may be rejected because they are not defended with acceptable reasons, even if they could be so defended. The deliberative conception emphasizes that collective choices should be made in a deliberative way, and not only that those choices should have a desirable fit with the preferences of citizens.

Cohen's third condition for ideal deliberation is equality, which is provided with more detail than formal condition F5's mutual recognition of deliberative capacities:

I3 In ideal deliberation, parties are both formally and substantively equal. They are formally equal in that the rules regulating the procedure do not single out individuals. Everyone with the deliberative capacities has equal standing at each state of the deliberative process. Each can put issues on the agenda, propose solutions, and offer reasons in support of or in criticism of proposals. And each has an equal voice in the decision. The participants are substantively equal in that the existing distribution of power and resources does not shape their changes to contribute to deliberation, nor does that distribution

play an authoritative role in their deliberation. The participants in the deliberative procedure do not regard themselves as bound by the existing system of rights, except insofar as that system establishes the framework of free deliberation among equals. Instead they regard that system as a potential object of their deliberative judgement.

The last, and perhaps also the most controversial of Cohen's conditions for ideal procedure, is consensus:

I4 Finally, ideal deliberation aims to arrive at a rationally motivated consensus—to find reasons that are persuasive to all who are committed to acting on the results of a free and reasoned assessment of alternatives by equals. Even under ideal conditions there is no promise that consensual reasons will be forthcoming. If they are not, then deliberation concludes with voting, subject to some form of majority rule. The fact that it may so conclude does not, however, eliminate the distinction between deliberative forms of collective choice and forms that aggregate non-deliberative preferences. The institutional consequences are likely to be different in the two cases, and the results of voting among those who are committed to finding the reasons that are persuasive to all are likely to differ from the results of an aggregation that proceeds in the absence of this commitment.

This condition accentuates the infinite nature of the deliberative process. Since people often disagree on what is rational, irrational, or fair, and, moreover, since they often also disagree on what is a valid basis for judgment, the deliberative process takes time. Yet, even with enormous amounts of time, one cannot be sure that consensus will be available at the end, and there are reasons to assume that it will not. If consensus cannot be reached, Cohen suggests majority voting as a compromise. But he wishes to emphasize that the vote in question is a vote on alternatives refined by the deliberative process. He argues that the institutional consequences of this kind of refined post-deliberation voting differ from aggregative voting, since the participants have been committed to solving the question according to ideal deliberative conditions (I will discuss this assumption in greater detail later in this chapter) (Cohen 1989, 21–23; see also Pettit 2001, 270).

The ideal deliberative process is constituted by these conditions and it should respect these conditions in order to reach legitimate decisions. Defenders of the deliberative ideal maintain that the ideal conditions rest upon human interaction's being guided by universal respect and equal reciprocity: the same norms that are the preconditions of moral and political dialogue. Indeed, Benhabib (2002, 11) observes that these conditions reflect a virtuous circle, by which she refers to the idea that political dialogue requires these conditions as a preliminary starting point, and should also result in these conditions becoming concrete and legitimate in particular decisions.

(Benhabib 2002, 11–12.) This circularity is not seen in such a favorable light by everyone (see, for example, Young 2000, 33–36), as I discuss later.

This free and equal dialogical interaction over common questions creates *democratic publicity*, a publicity in which the participants can hold each other responsible,³⁴ forming a political public sphere in which all the citizens can participate. Intuitively, however, one could question the possibility of public deliberation in large societies, an issue which provides a theme for deliberative theory: how to deliberate in a mass society. Yet the deliberative theorists typically answer that the deliberation does not require one singular dialogue.³⁵ Deliberation includes all the various dialogues which members of a society have with each other about common questions. As Ackerly and Okin (1999, 134–139) emphasize, deliberation works simultaneously on many levels: as a large process encompassing the whole of society, yet also in small groups addressing a particular question. Deliberation is an infinitely ongoing process in which the publicity as such is constituted by multiple, unfolding, overlapping dialogues on questions relevant to political decision making. As smaller public discussions are included in the deliberation process rather than located outside it, the deliberative public sphere is constituted by the publicity in formal decision making institutions combined with that in all the informal venues: social and political movements, parties, religious and artistic groups, social media, and so on. This deliberative publicity requires, among other elements, freedom of expression and freedom of association; in complex contemporary societies it also requires freedom of the press and free media (Cohen 1989; see also Benhabib 2002, 21, 115; Arato & Cohen 1992; Habermas 1996a).

The *public* plays an indispensable part in deliberation. It can be seen as having three different kinds of roles: (1) it creates a social space for deliberation; (2) it controls the deliberation process and the justifications brought out in the course of it; and (3) it offers a standard against which the outcomes of the deliberation may be compared. Therefore “the publicity” refers to the sphere and procedure of deliberation, but also to the type of justification that is used, which, along with mode of expression, should be as understandable to others as possible.³⁶ It also increases the weight of responsibility for participants. In the public realm one should consider what to say and how to say it in order it to be accessible and potentially acceptable

³⁴ As public reasoning is one of the major themes of political philosophy, deliberative theorists often build on the classic arguments: Kant’s deontological arguments for publicity presented in *Perpetual Peace* (1989[1795]), as well as those delicious examples presented by Mill in his *Liberty* (1982[1859]), especially in the chapter, “Of the liberty of thought and discussion” (1859). The use of these classic themes is elaborated by, for example, Gutmann & Thompson (1996, 95–127).

³⁵ This applies especially to defenders on decentralized conceptions, see footnote 33.

³⁶ Interpretations of this requirement comprise a relevant point of difference between the mainstream version of the deliberative ideal and the so-called “wide ideal of deliberation” discussed in later chapters.

to others. Accordingly, participants must acknowledge the social pressure of the public sphere, how the multitudes of others who comprise it challenge them to express their arguments in a more polished and considered manner. Furthermore, the various differences between the publics add their own tone. Different publics are delimited by the perspectives from which participants are able to view their environment, by their social imagination; shared values and shared background assumptions impact on each particular public, and what must be justified, and what can be taken for granted varies between them (Bohman 1996, 25–38; see also Arendt 1961; Habermas 1996).

2.2.3 ADVANTAGES OF THE DELIBERATIVE IDEAL

The ideal of democratic deliberation has many advantages. A deliberative view combines in the same decision-making procedure both the idea of a common good and an autonomous society of free equals. The deliberative ideal is seen as a way to improve collective decision making to produce a better fit with contemporary plural societies (see Cohen 1989; and also Benhabib 1996b, 2002; Gutmann & Thompson 1996; Dryzek 1990). According to deliberative theorists, deliberative democracy can make decisions more rational and legitimate. There are, however, different types of advantages.

Firstly, decisions made via deliberative procedures differ from bargaining and other market types of decision-making procedures in that they explicitly focus on the common good. Deliberative theorists maintain that legitimacy requires more than a mere arithmetical majority vote. Aggregative decision-making procedures, on the other hand, are seen to gain legitimacy via quantitative merit and the force of numerical majority, and therefore their legitimating potential is considered weak (for critique of such a view, see Elster 1997[1986]; Young 2000, 19–20). In contrast, in deliberative procedures the legitimacy of decisions lies in a shared consensus in which everyone accepts an outcome on the same grounds. Participants justify different viewpoints to each other, and make deliberative decisions that everyone participating in the process can accept, taking into account all the variety of viewpoints. The legitimacy of decisions made via deliberative procedures rests on the assumption that decisions made represent a shared view (Cohen 1989, 17–18; see also Benhabib 2002, 105–106, 133.)

The second advantage of the deliberative approach is that preferences are not taken as given, whereas typically, in aggregative ideals, qualities of preferences or their motivations are not objects of reflection.³⁷ Some aggregative preferences might just be sudden whimsical ideas or based on ill-founded prejudice, while others are carefully examined products of fundamental and pressing needs. Some scholars even claim that aggregative views seem to be linked with the methodological fiction of an imaginary individual whose preferences are deeply considered and justified (see

³⁷ Rousseauian ideals even request preferences to be kept “pure” from deliberation.

Benhabib 1996b, 71). Nonetheless, everyone undoubtedly has a range of thoughts and preferences, many of which are unreflexive, and not only should individuals scrutinize these but they should also evaluate the effects of their ideas on society as a whole. This is an asset of the deliberative view since the deliberative process enables people to evaluate critically both their own thought and that of others, and thus reflect a broad variety of individual views. This helps to diminish pure fallacies, or narrowly reflected opinions. Often, at the beginning of the process, different views and ideas may be rather contradictory and distant, but the public deliberation process helps people to reflect on their own points of view and also take other views into better account. Initially divergent views become much more compatible with each other via the process of deliberation (Cohen 1989; see also Benhabib 1996b, 71; Young 2000, 19–20). Ultimately, attending to and understanding others' points of view helps to diminish differences and tensions.

The deliberative process should help decision makers reflect upon and consider their views, and eliminate those that are ill-founded. Unelaborated individual preferences can be egoistic, dismissing even the most legitimate claims of others, but they may be partly or even wholly based on misunderstanding or fallacy. Furthermore, a public deliberation process forces individuals to think about what is acceptable to others in terms of reasons and justification, since they have to defend their views to an audience which will not be convinced without explanations of why something should be taken into account, why it is relevant. Because justifications should also convince those of different minds, taking their legitimate claims into account, viewpoints cannot be ill-founded or based on prejudice or bias in the ideal deliberative process. In order to justify their perspective to others, deliberators should enlarge their mentality to take other perspectives into account, at least during the process if not before. Benhabib, who defended a mainstream deliberative ideal much like Cohen's in the 1990s and early 2000s,³⁸ also refers to Hannah Arendt (1961) and her Kantian notion of *enlarged mentality* when discussing the ideal reasoning required by democratic deliberation. Arendt especially locates the enlarged mentality idea in relation to political judgment, where it is crucially applied to the potential acceptance of reasoning, since it is agreement with others that has to be reached. The special feature of judgments is their potential to affect agreement, not just in the personal, but also the public realm. Yet other, different viewpoints are required in order to go beyond a singular individual perspective and reach legitimacy in the public realm. Further, Arendt stresses that a judgment can never be universally accepted, as its validity requires the presence of other perspectives, and is limited to the perspectives present in the process (Benhabib 1996b, 68–72; Arendt 1961, 220–221; see also Cohen 1989; Phillips 1999, 113–116). Since deliberation requires participants to present their arguments and justifications in public,

³⁸ She mentions this similarity herself (Benhabib 1996a), although her view later developed a more agonistic orientation.

the orientation of participants shifts from the self to the public, facilitating understanding of other points of view (Young 2000, 24–26).

According to defenders of the deliberative ideal, the deliberative process makes collective decisions more rational. The relevance of inclusiveness can be interpreted epistemologically; when all points of view are equally included in the deliberation process, understanding may be acquired of multiple standpoints, giving rise to the question: what are the reasons behind the views? Thus the deliberative decision-making process is based on enlarged understanding of all the relevant viewpoints. Benhabib highlights (1996, 71) this important role of the deliberative process in the rationality of collective decision making when she writes that “no single individual can anticipate and foresee all the variety of perspectives through matters of ethics and politics would be perceived by different individuals” and also that “no single individual can possess all the information deemed relevant to a certain decision affecting all”. Deliberation enables a more coherent and considered picture of the whole (Cohen 1989; Benhabib 1996; 70–71; see also Lagerspetz 2001, 19–21).

Deliberation as open-ended reflection offers the potential for novel solutions to political problems. For example, Young highlights that, in addition to providing a general overview of a situation, understanding of inherent tensions and the reasons for them are clarified via deliberation. That makes it possible to focus on the actual problems (Young 2000, 30–31). As Anne Phillips has suggested (1999, 114–116), decisions reached via public deliberative reflection can be such that no one could have foreseen them beforehand; even should such ideas have arisen, there would not have been sufficient grounds to propose them. After decision-makers hear all the different viewpoints pertaining to a topic, however, they have the opportunity to create together new ways to solve problems that take the range of perspectives into account.

The deliberative process also impacts on participants and their civic skills and virtues. How should a point of view be justified to others? How should one listen? This helps participants to develop a broader understanding of society and the perspectives it contains. Deliberative decision making broadens and deepens the opportunities of citizens to affect their society – not just the decisions made, but also the institutions of decision making and the topics of discussion, which are not predefined and limited. Participants are free to suggest new topics and redefine the scope of deliberation. As Cohen maintains, the questions are not limited to their scope, and that also enables deliberation about the democratic institutions themselves (1989, 17–18).

Whereas the aggregative model of democracy faces difficulties with objectivity – incorporating a subjectivist view that considers normative statements as mere expressions of individual preferences – this does not seem to be a problem for the deliberative model (Young 2000, 19–21). The normative force of deliberative decisions is based on the fact that all those affected by the decision have accepted it in the course of the deliberative process. Thus the decisions are not the product of individual preferences, but

rather reflect the shared view of the best possible solution, taking into account all the various viewpoints (Cohen 1989). Iris Young (1997b, 401–403) adds that the deliberative ideal decision-making procedure also advances a more reflective and objective view of society as a whole, on a more general level. By objective she does not refer to a neutral ideal, but to a reflective view that locates individual viewpoints in a broader context of multiple particularistic viewpoints (see also Williams 2000, 124–125, 131–134; cf. Putnam 1995).³⁹

Proceduralism is one of the main strengths of the deliberative ideal. With its focus on procedures, it seems to be well-suited to a plural context since it does not require commitment to potentially contradictory values or a limit to be placed on the viewpoints that can be brought into a deliberation. In fact, value pluralism is considered the starting point for deliberation. The deliberative model departs from the assumption that people have different views concerning social life and the best solutions for social ills. The role of democratic procedures is to find ways to solve problems that take into account the pluralism of modern societies. According to the justificatory ideal, only procedural understandings of democracy that do not require commitment to a particular set of values are rational means to solve common problems in plural democratic societies. When decision making is conditioned only by those values and rules which have been accepted via mutual deliberation, decision making can fit flexibly into a plurality of values and changing situations. Moreover, individuals are not required to exclude their values from deliberation; rather, they can bring their value considerations into the process when presenting arguments in a joint deliberative dialogue. Democratic procedure can be seen as method to form, analyze, and allocate weight to these various viewpoints. The more conflictual the views, the more important it is that those disagreeing can present their arguments in public dialogue with others. Deliberative procedures offer a unique possibility to articulate the conflicts of interest of plural societies in social co-operation conditioned by mutually accepted rules (Cohen 1989; see also Benhabib 1996b).

2.3 IDEALITY OF THE DELIBERATIVE IDEAL?

Thus the deliberative ideal has many advantages. Yet there are problems as well. In the following, I discuss the ideal in a more critical light: the ideal *sui generis*, and also approximations of the ideal. Why are the approximations

³⁹ Young herself defends social perspectivism, an idea that social reality can be observed only as a combination of different social perspectives. The more viewpoints that are combined and the better the different views taken into consideration, the more objective the general broader view becomes. This idea of objectivity as a combination of social perspectives references Nietzsche (see, for example, 1968, points 259, 339, 481, 490, 602, 616, 636, 786). For more on the politics of difference and social perspectivism, see, for example, Young (1997b, 2000, 81–120).

also relevant? Because in Cohen's view it is not just the legitimacy of particular deliberative decisions that is based on this hypothetical justification – on a consensus that everyone could reach on the same grounds – it also applies to deliberative institutions themselves. As Cohen states (1997[1989], 72; *my italics*): “The notion of a deliberative democracy is rooted in the intuitive ideal of a democratic association in which *the justification of the terms and conditions of association* proceeds through public argument and reasoning among equal citizens.” According to Cohen, democratic procedures are justified on the basis of hypothetical consent given under certain imaginary conditions, namely, ideal deliberative democratic procedure. If it seems, as it does, that these ideal conditions remain too distant from the actual, the justificatory force of the ideal suffers.

Here I focus on a few interlocked themes: the ideal of pursuing consensus, the isomorphism between the ideal and its practical applications, and extending the justification from ideal to deliberation and even to post-deliberation voting. By the pursuit of isomorphism I refer to the use of the ideal of deliberative democracy as a model that democratic decision-making procedures should seek to mirror even in non-ideal conditions. In what follows I first elaborate on why the consensus condition is complicated as a political ideal; that is, as a normative ideal for democratic decision making in plural societies. Then I argue that, given the temporality of political decision making and the path-independency of deliberation, it seems that the justificatory interpretation of deliberative democracy faces difficulties in justifying the role of deliberation in political decision making.

The questions related to ideality and feasibility discussed in the methodological section of Chapter One (1.3) are relevant here. Cohen's aim is to provide an explicit statement of the conditions that fit with the formal procedural conception and that should be embodied by democratic institutions “as far as possible”. He states (1989, 22) that “the ideal deliberative procedure is meant to provide a model for institutions to mirror”. Yet it is not clear why actual institutions should seek to replicate it. Why does Cohen urge isomorphism with an ideal requiring in many respects ideal circumstances from the beginning? Two core conditions are especially complex in the absence of the latter: reasonability and consensus. In this chapter I principally discuss consensus – as an aim and also as a basis for the legitimacy of deliberative decisions. Themes related to reasonability are discussed in more detail in the next chapter in relation to Estlund's epistemic proceduralism. Yet these themes are intertwined.

2.3.1 COMPLICATED CONSENSUS

Reasonability and consensus conditions are typical of mainstream deliberative theories, not merely of Cohen's (see, for example, Benhabib 2002; Gutmann & Thompson 1996). More epistemically motivated deliberative theorists tend to share these goals as well, although epistemic proceduralists are willing to ease

up on the equality condition, which slightly changes the dynamics (see, for example, Estlund 2008; for more discussion on this, see the end of the next chapter). Those emphasizing the equality condition, on the other hand, seem to be willing to reduce either the reasonability or consensus requirements, or both, in favor of equality (see, for example, Christiano 2008; Young 2000; Bohman 1996; for more on this see Chapters Three to Five.) Questions related to the consensus requirement reflect many of the different complications of the deliberative ideal. One could also say that consensus foregrounds difficulties arising from the other requirements of the ideal, making them more visible. Why does Cohen argue that deliberation should aim at consensus? How should the consensus condition be applied to decision-making procedures with time limitations? Could the deliberative decision-making procedure be supplemented by a vote if consensus cannot be reached, as he claims?

Many of the questions consensus raises also relate to feasibility discussions and seem to be a point of fundamental disagreement between theorists. Should political processes be understood as reasonable deliberation processes aiming at consensus, or should politics be understood as essentially conflictual? According to Cohen and most other mainstream deliberative theorists, ideal democratic decision-making procedures should aim at consensus: consensus on decisions and also consensus on the justifications on which decisions are based. Yet some see the consensus requirement as excessively demanding; James Bohman (1996), for example, has suggested the option of a weaker consensus in which there would be consensus on the decision, yet not its justifications.⁴⁰ Others see idealizing consensus as intrinsically problematic; Young maintains, for example, that aiming at consensus can actually suppress the deliberation process and prevent people from bringing complicated and delicate viewpoints to the fore (Young 2000; see also Phillips 1999; Mason 1993); Christiano, whose approach is discussed in Chapter Four, does not defend the consensus requirement either (see Christiano 2008).

The strongest opponents of the consensus ideal are agonists (cf. the Greek *agôn*⁴¹) (see, for example, Mouffe 2000; Honig 1996; Pulkkinen 1998). For agonists political procedures are always more or less conflictual power struggles; therefore, aiming at consensus would merely quell the differences. A consensual decision would only be an interpretation made from the perspective of those with power in a given situation, one that suppresses the perspectives of the weaker to some degree. The powerful decide what

⁴⁰ Because of the complications related to the consensus requirement, he has proposed that deliberation should aim at something slightly less demanding. Instead of shared mutual understanding of both justifications and decisions, he suggests a less demanding form of mutual understanding, i.e., a certain kind of compromise in which the requirements for consensus would be weaker (Bohman 1996, 18–19, 33).

⁴¹ Greek *agôn*: contest, competition, conflict.

justifications are rational and reasonable, what should be taken seriously and what should be seen as mere prejudice, and how the different reasons should be weighted and combined (Mouffe 2000; Honig 1996; Pulkkinen 1998; see also Young 2000, 49; Shapiro 1999, 2003, 3–5.)

What does consensus ideally mean for Cohen? It is about jointly reaching a mutually acceptable decision. Moreover, it must be reached for the right reasons; not just any reasons will do. As Cohen emphasizes in condition I4 of his ideal: “ideal deliberation aims to arrive at a rationally motivated consensus—to find reasons that are persuasive to all.” In *Between Facts and Norms* (1996[1992], 339) Habermas explains the strong demand for the unanimity condition of consensus: “Whereas parties can agree to a negotiated compromise for different reasons, the consensus brought about through argument must rest on identical reasons able to convince the parties in the same way.” Thus, the normative judgments achieved via democratic deliberation should not be bound to subjective preferences but to insights that could be commonly accepted and moreover accepted on the same grounds.

This Habermasian definition of consensus employed by Cohen has raised many objections since it is considered too demanding (see, for example, Valadez 2001 and Bohman 1996 among others.) However, Benhabib has defended the requirement with a hypothetical example about two countries trying to reach consensus on human rights. Many of us would agree that the people of country X should not claim that they accept the principle of human rights on the basis that they see it as the best means to spread their values and own way of living. Meanwhile, those of country Y cannot answer that they accept human rights because that course provides international credibility and access to international markets. “If, however, we believe that human rights constitute the moral foundation for democracies everywhere, then we must be ready to argue for their validity on the basis of reasons we think can be justified from the standpoint of all human beings” (Benhabib 2002, 143–144). It might be that concrete decisions are often based on strategic viewpoints, but when we discuss justice and the decisions that bind us normatively, the reasoning on which they are based should be acceptable to all. Benhabib maintains that, seen from this perspective, it is not odd to demand that consensus should be reached on the same grounds for the same, shared reasons. Were normative judgments to be based on different, merely strategic reasons, they would not be morally binding. Judgments based on shared consensus reached via ideal deliberation, however, carry normative legitimating force (Benhabib 2002, 143–145).

The consensus ideal plays multiple roles in Cohen’s view. It is not just a way to make decisions; it also justifies democratic procedures. Yet the ideal is highly controversial. Often the most complicated democratic decisions are related to political disagreements concerning themes that involve moral conflict which, in plural societies, is one of the core difficulties for the justificatory deliberative ideal. How should solving moral conflict fit with the requirement of achieving consensus? Disagreements can be divided into

different types depending on the level of difference – on whether the parties accept each other's stances and justifications as understandable or justified. If the parties disagree about a decision yet regard the justifications of the other parties as acceptable, the situation is typically called a reasonable disagreement. A vast amount of mainstream political philosophy has focused on reasonable disagreement and how to solve conflicts in situations in which parties disagree yet consider the other party reasonable.⁴² What are more complicated are situations in which the position of the other party is considered unreasonable or even inconceivable (see, for example, Gaus 1997, 234–236; Phillips 1999, 114–115; Bohman 1996, 18–19, 33; Young 2000, among many others.) Theorists do not converge on how the importance of these should be weighted in democratic contexts.

How should disagreement in a political context be understood? Andrew Mason (2008[1993], 2–4) suggests in his *Explaining Political Disagreement* that different types of political disagreement can be understood in accordance with *imperfection conceptions* and *contestability conceptions*.⁴³ In his account the imperfection conception describes the idea that when disagreements arise at least one of the parties is mistaken. According to the imperfection view, with enough time, patience, will, and so on, disagreements can be solved so that all reasonable participants accept the solution. The view is connected to the idea that there are correct solutions to political disputes, whereas the contestability conception posits that rational use of political terms allows a wide variety of application, and thus political disagreements are intractable. The most extreme contestability views embrace relativist stances.⁴⁴ The core idea emphasized, however, is that there need be no intellectual error involved in political disagreement, because political concepts such as “justice” or “freedom” can reasonably be interpreted differently and, furthermore, used to express incommensurable ways of thinking.⁴⁵ It should be noted that, even if the distinction between understandings of political disagreement is useful for heuristic purposes, there are not many proponents of the extreme contestability view. Nonetheless, current epistemological

⁴² For example Rawls, Habermas, Gaus.

⁴³ Mason names Marsilius Padua, William Godwin, and John Locke as historical defenders of the imperfection view. He admits that it is difficult to find defenders of the contestability view, even if it is heuristically useful, though he suggests that William Connolly, and to some extent C. L. Stevenson, R. M. Hare, and Alisdair MacIntyre could be seen in this light (Mason 2008[1993], 2–4). In contemporary scholarship, at least Chantal Mouffe could also be taken as a proponent.

⁴⁴ See, for example, Connolly (1983).

⁴⁵ Mason (2008[1993]) cites Stevenson (1944) as a classic example of contestability: “People with different racial or temperamental characteristics, or from different generations, or from widely separated communities, are likely to disagree more sharply on ethical matters than on factual ones. This is easily accounted for if ethics involves disagreement in attitude; for different temperaments, social needs, and group pressures would more directly and urgently lead these people to have opposed attitudes than it would lead them to have opposed factual beliefs.”

debates concerning disagreement provide the basis for the possibility of contestability (or at least justify remaining agnostic in relation to the question).⁴⁶ It seems that both proponents and critics of contemporary deliberative views agree that in plural societies the reach of the imperfection conception alone is not broad enough; there remain disagreements that cannot be solved to the satisfaction of all reasonable participants.

The reasonable disagreement thesis does not seem devastating for the deliberative view, as it does not challenge the core essence of the setting; but incommensurable moral conflicts are more complicated. As Bohman (1996, 73) asks, “What role does reason play in such deliberations, if standards of rationality are themselves subject to deeply conflicting interpretations?” When conflicts challenge the basic framework of moral assumptions and political procedures they become profound, he maintains.⁴⁷ He points out, moreover, that solving deep political conflicts that challenge whole frameworks is often impossible without legal coercion or moral loss. Deep conflicts are especially complex when moral and epistemic standards are inextricably intertwined. The problem with the deliberative process is that, according to the deliberative ideal, only decisions accepted by all, on the basis of the same reasons, carry legitimating force. In Habermasian terms, therefore, the process seems too “singular” for plural societies. Procedural notions of public reasoning that are based on singular understanding of consensus cannot solve deep conflicts⁴⁸ (Bohman 1996, 18–19, 72–75). In the case of moral conflict the complication for the deliberative ideal is that there seems to be no way to solve the situation if the parties disagree not just over the solution, but also over what is to be counted as a reasonable justification. It is especially complex if the parties involved in deliberative decision making are not politically equal and epistemic bias and prejudices cause injustice.⁴⁹

⁴⁶ Disagreement is currently a topical theme for mainstream epistemology, perhaps one of the most debated themes of the field. See, for example, essays in the Feldman and Warfield edited volume, *Disagreement* (2010), and Christensen’s and Lackey’s edited volume, *The Epistemology of Disagreement: New Essays* (2013).

⁴⁷ Bohman uses as an example Sioux tribes who challenge the whole concept of settling past injustices with monetary compensation.

⁴⁸ Bohman himself defends reasonable moral compromises for this kind of situation as a more pluralist solution (1996).

⁴⁹ Miranda Fricker (2007) has elucidatorily denominated injustices related to this kind of situation in which parties are unfairly not treated as epistemic equals as epistemic injustice. She identifies two forms of epistemic injustice: testimonial and hermeneutical. Testimonial injustice refers to prejudices that “give a deflated level of credibility to a speaker’s word” (Fricker 2007, 1, see also Ch. 1). For example, in a deliberative setting, testimonial injustice would indicate prejudices that unfairly cause listeners to be less likely to believe a person’s arguments and give them credit. Consequently, those points of view are not taken into account in the decision-making process as extensively as they should be. Hermeneutical injustice refers to a lack of shared resources for social interpretation whereby, because of prejudicial flaws in shared interpretive resources, someone is either systematically or incidentally

However, Benhabib denies that moral conflicts are a major problem for the deliberative ideal; interestingly, she argues this partly on a quantitative basis. According to her, most democratic dialogue is not about questions that cannot be solved via deliberation, claiming that very few cases are such that parties find each others' stances incommensurable with their own after a free and equal deliberation process. She maintains that most democratic decision making concerns topics about which decision-makers initially disagree, and they can have very divided views, but after deliberation parties can nonetheless reach a consensus over the best solution. Benhabib emphasizes that it is not possible to know, prior to deliberation, the depth of disagreement, and she also notes that situations can occur in which compromises must be made when disagreements are irresolvable via deliberation (Benhabib 2002, 21, 136). I will not take issue with her quantitative claim, but it seems that there should be a legitimate way to make decisions even when disagreements cannot be solved via deliberation.

2.3.2 MIRRORING AND UNAVOIDABLE DEVIATIONS FROM THE IDEAL

The relationship between the ideal deliberative process and its application is one of the main questions for the deliberative procedural approach. In the following part I discuss the suggested isomorphism with the ideal in the light of aspirational deliberation, that is, deliberative procedure for less ideal circumstances. Some deliberative theorists focus solely on the ideal side, but Cohen explicitly considers feasibility considerations a relevant part of philosophical reflection. He sees political philosophy as making a reflective contribution to public reasoning about political life, although sometimes a strikingly small contribution, as he notes (2009a, 4). He maintains (Cohen 2009a, 5) that "sensible normative political ideas should be workable in the political world as it might be". Therefore, it seems fair to evaluate concerns about workability or feasibility as part of the assessment of his deliberative ideal.

What is the role of ideal deliberation in Cohen's view? Christiano claims that Cohen "fails to provide a cogent account of the importance of public deliberation" (Christiano 1997, 243), while Cohen argues that actual democratic institutions should mirror ideal deliberation: "The ideal deliberative procedure provides a model for institutions, a model that they should mirror, so far as possible" (Cohen 1997[1989], 79). He maintains (1989, 20) that what should be mirrored is "a system of ideal deliberation in social and political institutions". This idea of mirroring has Rawlsian echoes, even if the application is different. In the Rawlsian picture the ideal situation (i.e., Rawls' original position) serves as an abstract model. Rawls maintains that the

prevented from making sense of an experience that it is "strongly in her interest to render intelligible" (Fricker, Ch. 7). For more on Fricker, see 4.2.2.

fairness of political arrangements should mirror ideal fairness. So does Cohen.⁵⁰ Cohen cites Rawls when he writes, “The idea [of the fair value of political liberty] is to incorporate into the basic structure of society an effective political procedure which *mirrors* in that structure the fair representation of persons achieved by original position” (Rawls 1982, 45; italics and additions between parenthesis by Cohen 1989, 19). But Cohen argues that the Rawlsian notion of mirroring an ideal in political arrangements is too indirect and instrumental. Cohen prefers a less distant relation whereby the ideal situation is the one that we should mirror in actual political institutions. So he seeks to mirror a system of ideal democratic deliberation instead (Cohen ([1989]1997, 70–71; see also Rawls 1982, 45).

Yet the recommendation of isomorphism between the ideal and the application of the ideal procedure seems to arise from the point that no one is in a position to predict where such an ideal discourse – between actual people – would lead. Consequently, Cohen recommends that actual decision making should aspire to mirror ideal deliberation, to aim at isomorphism between the two. In order to make decisions taking into account all the viewpoints and reasoning, they need to be made understandable. Why are the views defended? By what kind of reasoning are they defended?

Cohen’s suggestion that actual societies should mirror ideal decision-making situations seems complicated. In this idea, procedures are assumed to be able to transfer their properties to outcomes if properly carried out. However, actual decision making does not happen in ideal deliberative conditions – deviations are unavoidable. Since actual deliberative situations always deviate from the ideal, there is *the problem of second best* (explained in 1.4). Even if a specific ideal procedure were to lead to just decisions in an ideal situation, that does not give us sufficient reason to expect that once some of these conditions are not met, the same procedural structure would still be one to choose. This seems rather clear in obvious cases; if, for example, there were no freedom of expression, we would not expect an otherwise ideal deliberation to lead into ideal justified decisions. This is more complex when deviations are only barely recognizable or hidden. In cases where some of the deliberating parties have greater resources, for example, this can affect the process in many ways (cf. Fricker 2007).⁵¹ Yet, if it is not obvious to

⁵⁰ Cohen refers to Rawls’ account of democratic politics and an informal argument for the ordering of political institutions: “Justice as fairness begins with the idea that where common principles are necessary and to everyone’s advantage, they are to be worked out from the viewpoint of a suitably defined initial situation of equality in which each person is fairly represented. The principle of participation transfers this notion from the original position to the constitution [... thus] preserv[ing] the equal representation of the original position to the degree that this is *practicable*” (Rawls 1971, 221–222; my italics). Cohen cites this paragraph but, interestingly, replaces the “practicable” used by Rawls, with “feasible” (Cohen 1989, 19).

⁵¹ Practical applications of deliberative (like any participatory) arrangements should be studied for hidden biases with utmost sensitivity. Empirical political scientists are of course doing that. In Finland,

disadvantaged participants that the deliberative setting is unequal, the decisions made might seem to be legitimate – even if they are, in fact, the result of a biased procedure. This can produce a vicious circle wherein biased procedures lead to biased results with no one recognizing the bias involved. This difficulty – that of recognizing socially biased settings – poses the greatest threat when putting ideal deliberation into practice (see Estlund 2008, Ch X, 184 fn 2; Young 2000, Ch. 1–3.)

In the case of deliberative democracy, it is an ideal. But the question is, can it be applied to non-ideal circumstances? Can it be approximated? In ideal conditions that fulfill the conditions of open reasoning, political equality, inclusion and free publicity, the deliberative process can potentially enable reaching a just decision and legitimating it once made. However, even if the deliberative ideal on an abstract level defends equality and inclusivity, and takes the pluralism and separateness of viewpoints into account, the deliberative ideal suffer from a certain circularity. It presumes the ideal conditions in order to produce ideal decisions. According to the deliberative ideal, a decision is just when it has been reached via the ideal deliberation process in ideal conditions. However, according to the Cohenian version, the justification is based on the acceptance by all of the decision (and also the whole deliberative process).

Attaining ideal, imaginary conditions, however, is impossible in practice (rather than mere pessimism as Cohen seems to imply [2009b]). Young graphically describes the problems involved in applying the ideal deliberative procedure, beginning with the premise that societies are more or less unequal. In non-ideal circumstances the deliberative procedural context of formally open and equal dialogue can reinforce hidden and yet effective actual inequalities without anyone noticing. The socially, culturally, and economically privileged can use their skills to define topic choices, the kind of argumentative styles that are considered reasonable, and so on (as discussed previously). Hidden deliberative disadvantages tend to accumulate in the formally equal deliberative context, and several types can cause epistemic injustices. A lack of cultural and social resources, for example, or opportunities to develop skills useful in the deliberative context – in public discussion and when presenting and evaluating arguments – make it much more difficult to participate effectively in public deliberation procedures; this reduces the opportunities to influence decisions. If, at the same time, those with a different perspective are skilled and able to make their case understood and acceptable, their views will be taken into greater account in decision making – thereby even further disadvantaging those whose means are initially circumscribed. Thus, what formally appears to be an equal deliberative setting can produce a vicious circle (Young 2000, 30–35; Bohman 1996, 108–112, 1997; see also

for example, Maija Setälä & al have studied the differences in deliberation with enclaves, i.e. groups of similarly minded and mixed groups (Setälä with Grönlund & Herne 2015). Yet the empirical work is complex, limited, expensive, and slow.

Fraser 1992, 115–128; Williams 2000, 134–141; Mansbridge 1999, 226–227; Fricker 2007).

According to Young, the consensus aim is the main feature that makes the deliberative ideal exclusive when it is applied in less than ideal conditions. First, if shared consensus is understood as the goal of the deliberative process, the scope of viewpoints and topics that are brought into sphere of deliberation may be limited. Young observes that if deliberators are committed to reaching consensus, it can cause them to elide the most complicated themes if it is foreseen that attendant differences will be too deep and conflictual. Yet conflicts and disagreement are part of meaningful discussion, and participants in democratic dialogue should not be discouraged from continuing discussion because there seem to be deep disagreements. As Young claims (2000, 44), “too strong commitments to consensus as a common good can incline some or all to advocate removing difficult issues from discussion for the sake of agreement”. When disagreements are profound and there is no shared understanding, it is quite likely that open public dialogue will reveal even more differences; certainly, especially when there are structural inequalities, processes of democratic communication may be characterized more by struggle than agreement. Yet even in this kind of situation it is more important to learn about the differences that are the source of conflict than to aim at consensus (Young 2000, 44).

These problems are related to the dynamics of hidden inequalities, power asymmetry, incommensurability, and the weight accorded to justifications. Young emphasizes that, under conditions of inequality, existing power relations and prejudices affect how different views are evaluated. Even if one accepts, in line with Young, that it is possible and even necessary to seek to understand other perspectives, it is difficult to show testimonial virtues and fairly assign weight to competing perspectives. Phillips (1999, 116–121) has noted that it is especially difficult if understanding the other perspective could lead to decisions costly for oneself. It is not hard to imagine that it would be even more difficult if understanding the other perspective were to reveal one’s own behavior as unacceptable or shameful. Human beings are biased towards their own perspective, and what counts as a valid point or justification may depend on one’s own values and prejudices. Therefore, favorably interpreting the justifications given by others from a different perspective is challenging, even with the best intentions, if they contradict one’s own deeply held convictions. As Jorge Valadez maintains, seeking understanding with an open mind can only diminish the political power imbalance, not eliminate it wholly (Valadez 2001, 101; see also Dryzek 2005). Thus it is quite likely for consensus reached via public deliberation to express the interests and convictions of those already better off when deliberation begins, while the voices of those worse off may not be clearly heard or understood.

Thus, as Young puts it (2000, 43), if participants in seemingly democratic dialogue

are differentiated by a social position or culture, and where some groups have greater symbolic or material privileges than others, or where there are socially or economically weak minorities, definitions of the common good are likely to express the interests and perspectives of the dominant groups.

Meanwhile the claims and points made by the less privileged might seem unreasonable or even irrational; proving a point is especially difficult if testimonies are not weighted fairly evenly in the beginning. Nonetheless, it is difficult for those in the less privileged position to show that what appears to be a neutral situation actually favors the perspective of privilege, or even for the more privileged to recognize the unbalanced nature of a situation. Even the less privileged themselves often suspect their own experiences and interpretations (Young 1996, 52; 1997b, 399; 2000, 43; Phillips 1999; see also Bohman 1996; Fricker 2007; Fraser 1992; Valadez 2001).

Melissa Williams (1998) also elaborates problems related to these themes, emphasizing that deliberative democracy requires very refined skills of participants, not just in presenting their own views in a reasoned manner, but also the ability to listen in order to understand the views of others and fairly take into account their point of views and justifications. If deliberative democracy requires participants to be able to distance themselves from their own interest and prejudices for the sake of the common good, it is enormously demanding both motivationally and in relation to human psychological abilities. As James Johnson (1997) has remarked, deliberative democracy will remain utopian “insofar as it makes ‘heroic assumptions about participants’” (see also Williams 1998, 143–145).

Cohen admits that actual deliberative political arenas are not equal, and that they suffer from deliberative pathologies, also observing (2009b, 255) that deliberation is a “fragile accomplishment”. Yet he seems to maintain that objections raised against the principle of ideal deliberation exaggerate feared effects and deliberative pathologies (see, for example, Cohen 2009b, 254–260). In response to the claim that unequal argumentation skills are a problem for deliberation he argues that “evidence from deliberative polling suggests otherwise: deliberative capacities seem reasonably widely shared”; therefore, he claims, that critics are “too quick to conclude that deliberative decision-making empowers the verbally agile”. His view of the practical difficulties of application of the ideal to non-ideal circumstances seems to be that the tensions between ideal deliberation and practice should be explored and dispelled. He suggests institutional measures to redress the consequences of practical situations. Furthermore, he implicitly claims that critics are too pessimistic concerning potential ways of redressing pathologies.

However, it is still not clear why actual decision-making procedures should aim to mirror the ideal. Why should actual democratic practices resemble the ideal? What would be the basis for aiming at an isomorphism between the actual and the ideal? The ideal deliberative situation cannot be realized in

actual democratic societies but it is not clear what would be the second-best alternative. Cohen seems to think that isomorphism between the ideal and the actual would constitute a second-best alternative with some redressing (see, for example, Cohen 2009b, 253–260), but there seems to be no guarantee that trying to approximate the ideal situation via redressing measures would bring better outcomes than some other solution. Deviations from the ideal affect the project and trying to keep the deviations as minimal as possible might cause other problems. Even Estlund (2008, Ch X, 186) argues against that “[p]olitical behavior does not and should not take place in anything resembling the ideal deliberative situation, and so the deliberative mode of behavior is not privileged in practice”. He sees, therefore, that the deliberative ideal has epistemic virtues, but that in actual democratic politics sharp and disruptive activity has an important role to play.

There are also alternative strategies for mirroring. One strategy could, just for the sake of an example, be Herbert Marcuse’s “selective intolerance”: meeting a deviation with a counter deviation. This structure is employed by Estlund, for example (for more on the subject see 3.3, and also Estlund 2008, Chapter X). Estlund has discussed the deliberative ideal and also the theme of countervailing deviations. His exemplar for the latter continues on the same note as presented above: a deliberative situation in which one group has disproportionate control over the debate because of their superior social power. In these conditions unrestricted freedom of expression could favor the interests of the powerful. Thus, it might actually be better in some sense to restrict communication, that is, deviate from the ideal in order for the deliberation to lead to more ideal outcomes. According to Estlund, mirroring the ideal deliberation provides no guidance for this type of case, as the ideal seems to suggest that even though unequal power is a deviation from the ideal, any compensating infringement of the speech of the powerful would be a further deviation, and should thus be avoided (Estlund 2002, 10). A further version of this idea is discussed in the next chapter along with Estlund’s epistemic proceduralism.

Most of the critiques of consensus discussed above are related to applications of consensus to less ideal circumstances. However, when discussing democratic decision making in plural societies, it seems that questions concerning complicated situations are unavoidable. Recent empirical psychological studies also suggest that despite the fact that group decisions often benefit from interaction, and that vaguely consensual decisions are likely to be correct in some situations, it seems that in complicated situations the effect of aiming at consensus could have the opposite outcome. The reason for this lies in the psychological features of humans, in our excessive reliance on subjective confidence; according to these studies, actual consensual decisions made by groups seem to express confidence levels rather than accuracy. Yet if the majority of a group is in error, reliance on confidence is misleading. As Koriat (2012, 362) writes, in “situations in which most participants tend to make the wrong decisions ... social interaction is expected

to yield decisions that are even less accurate than those of individual alone". Furthermore, pressing for consensus⁵² could have undesirable effects as, "[i]n such cases, it is the low-confidence individuals who are more likely to be correct, and reliance on the more confident members should lead the group astray" (Koriat 2012, 362). So it seems that seeking consensus might lead to a detrimental outcome both in terms of equality and from an epistemic perspective.

2.3.3 TEMPORALITY, ABSENCE OF CONSENT, VOTING, AND PATH (IN)DEPENDENCE

Questions concerning consensus and persisting disagreement are also connected to levels of idealization and the extent to which the ideal abstracts from practice. Let us assume for a moment that if we idealize enough, that is, until reaching a utopian situation with infinite time – the ideal discourse situation between free and equal deliberators – it might be imaginable that the separateness between people could be overcome. Yet, with idealizations, it is crucial to consider the elements from which one can idealize, and vice versa: which core elements of the phenomenon discussed should also be part of the ideal version? For example, if the justification of an institution is based on an idealization, how far can the justification be extended? Are the features on which the justification builds present in the actual situation as well? Are they connected to the target of justification (as otherwise the justification will not have relevance)?⁵³

In the case of democratic decision making procedures, one core element that should be taken into account is temporality: the inevitable fact of a time constraint. In Carlos Santiago Nino's words (1996, 188): "democracy can be defined as a process of moral discussion with a time limit". In the Habermasian ideal (a-political) discursive situation there is no urgency to make a decision but Cohen has brought this justification strategy into the arena of politics. Nonetheless, it is a specific context. As Eerik Lagerspetz emphasizes (2010, 48), "[i]f there is no time limit for deliberations, there is no real need to make any binding decisions at all ... This supposition makes the models a-political: if there is no need to make binding decisions, there is no politics." This might sound rather strict, but as the discussion is about decision making in terms of democratic procedures, it seems that the ideal should take into account the need to make decisions in a political context. Therefore, a time

⁵² In these studies, "consensus" is interpreted rather vaguely as something attained via discussing a matter until participants reach a joint decision, not in the Habermasian manner.

⁵³ In a more contextualized way of expressing a similar point, Stuart Hampshire criticizes a narrow notion of reasoning that is not connected to its subject (2000, 13–14). According to Hampshire, the process of reasoning should be constructed by starting from the practical end, otherwise the explanatory value might be zero or one might end up with something "utterly disconnected" from the issues to be dealt with. What is the empirical situation for which the process of reasoning is needed?

limit seems essential for democratic decision making (Lagerspetz 2010, 47–49, 53).⁵⁴

In addition – and connected – to the time limit, another crucial task for democratic theory is to provide an answer to what to do if disagreements cannot be solved. Even if justificatory deliberative democrats do not consider all disagreements mere errors,⁵⁵ they seem convinced that at least most disagreements can be solved. Political philosophy comprises normative theorizing in a specific context – in the political sphere of plural societies. Even under conditions in which consensual decisions cannot be reached by public deliberation because of irresolvable indeterminacies, democratic decision-making procedure should proffer a way to make decisions in a normatively justified way. Otherwise the scope of justification seems to remain too distant. How should political disagreements be best umpired in the absence of consensus?

Cohen accepts that sometimes disagreements cannot be solved and there might be cases in which consensus cannot be reached. He suggests that if consensus is unreachable then decisions should be made by voting (Cohen 1989; see also Benhabib 2002; Gutmann & Thompson 1996; Miller 2003). However, Cohen (1989) claims that even if deliberation is concluded by voting “the results of voting among those who are committed to finding reasons that are persuasive to all are likely to differ from the results of an aggregation that proceeds in the absence of this commitment”. He highlights that the preferences of participants who have sought consensus have undergone a long process of deliberation even if the decisions cannot be reached deliberatively; thus many of the advantages of deliberation are incorporated into the results of voting. When the options have been chosen post-deliberation, they are not the same as prior to deliberation.⁵⁶

Cohen’s justificatory deliberative ideal is built upon the epistemic force of better argument and tracking the better argument in a deliberative setting. If consensus is to be replaced by some other mechanism, this other mechanism has to be connected to tracking the better argument and more substantive reasons (cf. Estlund’s epistemic proceduralism in the next chapter). However, it seems that this relation between deliberation and voting in Cohen’s deliberative view is less solid than it first appears. The connection is rather

⁵⁴ The awareness of a time limitation would quite likely impact on the process of deliberation if occurring in the deliberative setting. Simone Chambers has argued (1995, 248), for example, that “the more the parties are constrained by the need to make a concrete decision, the less motivated they will be to act discursively and the more motivated to act strategically”.

⁵⁵ For different types of political disagreements see, for example, Mason 1993.

⁵⁶ David Miller also discusses the change of preferences via deliberation. He follows similar lines of thought as Cohen, suggesting that deliberation aids the understanding of the other viewpoints and the reasons behind them, and also diminishes misunderstandings (Miller 2003, 188–191; 1.2.2).

complex (see, for example, Gaus 2008),⁵⁷ and yet it is essential for legitimacy. Christina Lafont provides an insightful view on this issue, noting that deliberative theorists must be able to justify voting on epistemic grounds. The absence of consensus (in a deliberative case) also means an absence of consent, and the “consent” reached via achieving consensus is the basis of the legitimacy of the (justificatory) deliberative ideal. As Lafont argues (2006, 17):

By declaring the substantive reasons for political decisions irrelevant for securing the agreement of the citizens, the deliberative model would just concede defeat to the aggregative model of democracy and recognize that a deliberative procedure of tracking the force of the better argument has no intrinsic contribution to make in determining the outcome of decision making process.

Consequently, justificatory deliberative theory must be able to connect the voting rule and the epistemic virtues of deliberation. For this reason deliberative theorists have to make the connection between the epistemic benefits of deliberation and voting. Otherwise as Lafont (2006, 18) argues: “if a minority gives its assent to majoritarian outcomes ‘for procedural reasons that are unrelated to any epistemic features of the democratic process, the deliberative model makes no essential contribution to a theory of democracy’”. (Lafont 2006; see also Lagerspetz 2010, 49.) Voting could be defended for equality-related reasons, but that option is not open for the defender of justificatory deliberative democracy (and nor to defenders of the epistemic version⁵⁸).

How could ideal deliberation be connected to the epistemic features of the procedure? Many mainstream deliberative theorists argue that even if consensus cannot be reached, the vote after deliberation would differ from the aggregative voting. Benhabib, for example, argues (1994, 33) for “the presumption that if a large number of people see certain matters in a certain way as a result of following certain kinds of rational procedures of deliberation and decision making, then such a conclusion has a presumptive claim to be rational until shown to be otherwise”. Why would it differ in relevant sense? Is the idea that a majority vote could predict the likely result of consensus? The potential connection between deliberation and voting depends on whether the role of consensus is seen as indicative or constitutive. If the validity of norms which are the subject of deliberation is independent of the process of deliberation, the role is indicative. If the validity is constituted by the very process of deliberation, then the role is constitutive. Within this framework, if

⁵⁷ In addition, the choice of a particular voting procedure – majority vote, super majority, etc. – to be combined with public deliberation is much less straightforward than deliberative theorists assume (see, for example, Gaus 2008; Pincione & Teson 2006; van Aaken et al. [eds.] 2004). Gaus (2007, 2) states that he is puzzled by the fact that deliberative democrats even “suppose that the majority rule procedures are the best way to cope with the demands of practical politics”.

⁵⁸ Estlund (2008, Ch. XII), however, rejects Cohen's the tracking claim on contractualist grounds.

the validity of a decision is constituted by unanimous consent, then a mere majority decision cannot have validity pre-consent, since no valid result exists prior to consensus. But if the consensus is only indicative of a valid decision, one should be able to justify why a majority decision or any other vote would be the second-best indicator of this validity (Lagerspetz 2010, 50; see also Estlund 2008, 286 fn. 6). Cohen seems to defend the constitutive version, as he states (1997[1989], 74), “The deliberative conception emphasizes that collective choices should be made in a deliberative way, and not only that those choices should have a desirable fit with the preferences of citizens.” He also notes that “what is good, is fixed by public deliberation, and not prior to it” (Cohen 1997[1989], 83).⁵⁹

Therefore, it seems that voting cannot settle the problem, since Cohen should be able to proffer a satisfactory answer on how to combine deliberation with voting in those situations in which the competing views are indeterminate and there is a practical need to make a decision. Temporality *and* the need to make a decision complicate the picture. I claim that this combination also has one more difficulty related to the path independence of the deliberation process.⁶⁰ Even if we assumed for the sake of argument that consensus were reachable within infinite time, in the partial deliberation procedures there is no state of consensus that could be used as a reference point. Without the point of consensus, one cannot evaluate if the deliberation process is just starting, or is already approaching the final stage. Are the options discussed just some early sketches? Has some random extreme opinion taken the whole discussion in a weird direction for a while? Is convergence already forming? Or is it just a false convergence that will prove to be based on a misunderstanding in the long run? Cohen seems to assume that voting at some random point during the deliberation process somehow carries the benefits of the deliberation process. However, there seems to be no guarantee that it would do so, as the deliberation process is not path dependent. One should be able to predict the path and the length of infinite ideal deliberation to be able to assess the partial process of deliberation – in order to evaluate whether the process just beginning, at the end of the very first stage, already in the middle, or approaching the final outcome. A brief, partial deliberation process terminated at a random point might, in the worst-case scenario, lead to worse decisions than no deliberation process at all if, for example, a vote is taken at a stage at which deliberation has just carried parties further away from each other, or brought up the strongest hidden prejudices or most strained tensions. Then a vote might lead to worse decision than it would have before the deliberation process even started.

⁵⁹ Although somewhat confusing Cohen also states (1997[1989], 73) while defining the conditions for ideal deliberative procedure, that outcomes of democratic procedures “are democratically legitimate if and only if they *could* be the object of free and reasoned agreement among equals” (my italics).

⁶⁰ This point seems rather obvious, yet I have not come across this problem in the literature. On the idea of path dependency in a different context, see Gaus 2003, Ch. 5.

Deliberation should be somehow *path dependent* in order for a vote to settle a question. We should be able to predict that if at point of time T_n decision-makers hold certain views V_1 – V_{55} on the questions deliberated, then they might reach decision D_{28} at T_{n+100} . Hence it is not necessarily an epistemic improvement firstly to engage in “some” deliberation and then vote. There are no metrics to evaluate in advance the length of deliberation in relation to epistemic benefits gained by it. A defender of partial deliberation might try to reply in the tones of an epistemic proceduralist that maybe partial deliberation does not always lead to better decision via voting than non-deliberative procedure, but surely it typically does, and thus the procedure is defensible in the long run on an epistemic basis. But Cohen does not seem to defend this kind of option, and even if he did, that would not settle the issue.

In addition to the time element, there is another relevant difference between partial deliberation and consensus. As cited in the beginning of the chapter, Cohen defends the idea of hypothetical acceptance, maintaining (1997[1989], 73) that “outcomes are democratically legitimate if and only if they *could* be the object of a free and reasoned agreement among equals”. But as Bohman and Richardson point out (2009), there is a relevant difference between “could accept” and “accept”. They believe that leaning on an idea of “RACA”, that is, “reasons all can accept” – that is also a key element in Cohen’s view – “is a mistake”. As they write (2009, 254): “The idea of RACAs, built around the modality of possibility, seems to offer a way for the liberal to characterize political ideals in a way that neither appeals to a current consensus that does not exist nor rests its weight on substantive normative commitments.” Yet, as they point out, appealing to the possibility holds an illusory hope. The idea of possibility seems neutral. What does “could accept” actually mean in a contrafactual setting? Apparently it simply refers to an imaginary idea of a reasonable person in a hypothetical setting. Empirically this hypothetical acceptance is rather indeterminate. As Bohman and Richardson maintain (2009, 261) the hypothetical test is “unhelpful, unworkable, and effectively otiose”. It would be simpler to say, for example in Cohen’s case, that outcomes are democratically legitimate if they “cohere with the constitutive requirements of reasonableness”.⁶¹ As Bohman and Richardson emphasize, the question of what *could be* reasonably accepted is a normative issue, whereas what *is* accepted is practical. Yet justifying an ideal procedure on the basis of actual acceptance in a hypothetical contrafactual setting is complex. When one takes into account deliberative pathologies, epistemic considerations, the political setting, and problems related to

⁶¹ Bohman & Richardson themselves rather defend legitimacy that is based on certain deliberative virtues, but in a more open-ended manner, observing that “political process is legitimate only if each of its participants engage forthrightly with others’ arguments and respond openmindedly to them” (2009, 273.) This actually comes very close to the view on deliberation defended in Chapter Six on the basis of discussion in Chapters Four and Five.

consensus I would be less optimistic than Cohen concerning the possibilities of prediction.

2.4 PROCEDURALISM AND OUTCOMES IN THE JUSTIFICATORY VIEW

One key motivation for theorizing on democratic procedures and substance seems to arise from the aim of coping with the pluralism of contemporary societies. Theoretical strategies range from the epistemic purposes of acquiring knowledge of the different viewpoints to the aims of overcoming differences by procedural means and treating people as equals in the decision-making process. In addition to being one of the paradigmatic deliberative theorists, Cohen is also one of the few who have explicitly argued (1994) against the division between procedures and substance. He maintains that procedures and outcomes actually face similar questions and problems in relation to pluralism. He claims (1994, 593) that “the distinction between procedure and substance is not a fundamental distinction in political justification”. He also states that “[p]rocedural and substantive concerns stand on a common footing in democratic thought” (1994, 594). He discusses (1994) how outcome justice and procedural justice are not as distinguishable as it is often thought, claiming that moral disagreement is no more of a problem to agreement on the procedures than it is to agreement on the substance. Therefore, he claims, if we accept that we can reach consensus on the procedures, we should accept the possibility of reaching consensus over the outcomes as well.

Cohen has a point here. While there is no doubt that disagreement affects not just epistemic prospects but also the possibility of reaching agreement on the procedures, it is not clear why justification of procedures and justification of outcomes should be joined, as Cohen seems to think. As Ceva (2016, Ch. 3) emphasizes, procedures and substance do not face the same problems, even if both undoubtedly do face problems. As Ceva maintains (2016, 73) one should distinguish between two claims:

(1) the decision about the desirability of certain procedures ultimately depends upon the qualities of the procedures' expected outcomes, so the disagreement on outcomes naturally extends to procedures; or

(2) the decisions about the desirability of certain procedures and outcomes, although separate, both depend on substantive normative presuppositions which are exposed to disagreement, so procedural principles of justice may in themselves be no less controversial than those concerning outcomes.

Cohen's view represents the first claim, the more problematic of the two, in which the desirability of the procedures depends on the desirability of the

outcomes. In the second version, on the other hand, it is equally understood that the disagreement as such is not a reason to turn towards proceduralism, as procedures are no less prone to disagreement than outcomes. Yet the second version sustains the difference between procedures and outcomes. As Ceva points out (2016, 74): "Procedures and outcomes are distinct social objects, and recognizing the justice of one tells us nothing about the justice of the other." That seems to be the crucial difference, one that is relevant for the latter half of this work. Evaluating the justice of the procedures should be conducted with different standards than those used to evaluate the justice of the outcomes. For example, the outcome of certain procedure might be perfectly just although the procedure that led to it was unjust, and vice versa (Ceva 2016, Ch. 3).

Public deliberation procedures can be considered valuable for different reasons: as the source of political justification for the outcomes, or for their intrinsic procedural values. I do not wish to deny that both play roles in defending deliberation; on the contrary, I think they do. Nevertheless, it seems that there are difficulties in justifying the combination of procedural and epistemic elements in the way Cohen seeks to do. His starting point is that both substantive and procedural perspectives are relevant,⁶² and this seems correct. Yet conjoining them as he does in the justificatory approach suffers from certain shortcomings, as discussed above, while the epistemic part of the formulation does not seem to carry the justification over these difficulties. Furthermore, Cohen's interpretation of the egalitarian character of democratic procedures does not seem adequately developed to serve a justificatory purpose. Cohen himself argues that the way he understands equality in democratic procedures, is that it is too *thin a value for a central normative role* (2009a, 6), arguing, as mentioned at the beginning of this chapter, that "treating people as equals" is not enough for his purposes. At the same time he is concerned that the mere epistemic conception is "missing something about democracy as a fundamental political value" (Cohen 2009a, 7). Yet, despite the doubts expressed here, his approach is very influential, and presents many themes that are relevant for procedural considerations. Even if Cohen's version of a solution does not seem fully satisfying from my perspective, I am sympathetic to his aims. I also see that the core question that seems to motivate his project – namely, how to employ both epistemic and procedural elements in the justification of democratic deliberation – is a crucial one, even though I do not agree that these elements should be considered conjoined. On the other hand, I do agree with him when he argues (1989, 17) that democracy should be treated as "a fundamental political ideal, and not simply as a derivative ideal" that can be explained in other terms, something with which epistemic proceduralists, discussed in next chapter, might disagree.

⁶² Gutmann and Thompson (1996, 27), however, defend "deliberation as an outcome-oriented process; citizens deliberate with the aim of justifying their collective decisions to one another as best as they can".

3 THE EPISTEMIC APPROACH AND DELIBERATION AS A TEMPLATE

3.1 INTRODUCTION

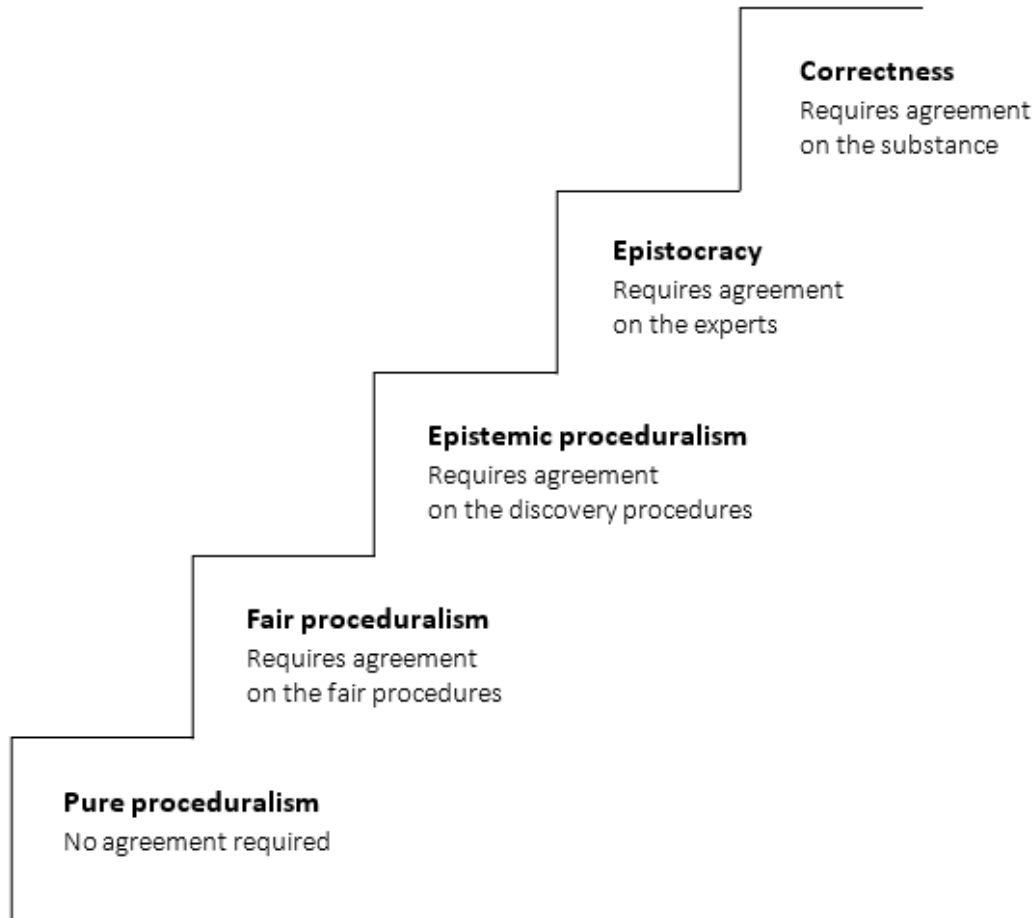
Where does the value of democratic procedures arise? From the just outcomes of decision-making procedures? Or from the just decision-making procedures? One of the appreciated elements of the deliberative ideal is its seeming independence from prior substantial commitments; another is the feature that even procedural commitments themselves belong in the sphere of deliberative decision making. Yet the reality is that even deliberative procedures cannot avoid all substantial commitments. Thus, in this and the following chapters, I discuss the kinds of substantial commitments democratic procedure should involve. The previous chapter addressed Cohen's justificatory deliberative proceduralism wherein he defends the interconnection between procedures and substance. As we have seen, however, justifying democratic deliberation on that basis is a complex task; therefore I proceed in a more singular mode in the following discussion.⁶³ As mentioned above, there are two strands in current democratic theory – epistemic and intrinsic proceduralism – emphasizing procedure and substance respectively, as distinct elements. Bohman and Rehg exhibited prescience in 1997 (xxvii–xxviii) when predicting that the internal tension between procedural justification and the need for independent standards of judgment and reason would be one of the key future issues for deliberative theorizing: in recent debates the combination of procedural and substantial standards has been one of the vital themes in normative democratic theory.

By epistemic proceduralism I refer to a view according to which democracy's justification is built on a procedure's tendency to produce just decisions. Fabienne Peter (2017b, 76) describes the growing interest in epistemic questions in strongly worded terms, claiming that “recently, there has been an epistemic turn in the literature on deliberative democracy”. In this chapter I examine what seems to be the most prominent and sophisticated recent hybrid of procedural and substantial elements: epistemic proceduralism as defended by David Estlund in his book, *Democratic Authority* (2008). Estlund himself locates the view he defends on a continuum between pure proceduralism and epistocracy, employing some Cohenian elements in his approach. As he explains (2008, 286 fn. 6), he draws loosely on Cohen's deliberative ideal, even though the theoretical role he accords this imaginary situation is explicitly epistemic, whereas for Cohen the deliberative ideal is more constitutive. In this chapter I retreat somewhat from a

⁶³ Thomas Christiano (2004) has distinguished between monistic and non-monistic conceptions of political legitimacy on the basis of whether the source of legitimacy is singular or non-singular.

deliberative frame to focus on the dynamics between procedure and substance on a more general level, as one of Estlund's strengths lies in showing some typical weaknesses of procedural accounts in relation to substance. Nonetheless, in the last parts of the chapter I return to questions concerning the role of ideal deliberation and equality.

Figure 1. ⁶⁴



3.2 EPISTEMIC PROCEDURALISM BETWEEN CORRECTNESS AND PURE PROCEDURALISM

Estlund likes to situate his epistemic proceduralism on a continuum between correctness defenses of democracy and pure proceduralism. He maintains (2008, 8) that in his account “the bindingness and legitimacy of the decisions

⁶⁴ My visualization in a stair format illustrates Estlund's core idea. While he has visualized the elements in a linear format (1997, 182 Fig 6.1), I prefer the stairs since Estlund's procedural steps are always steps downwards from the epistemic end.

are not owed to the correctness of the decisions, but to the kind of procedure that produced them”, adding that “a central feature of the procedure in virtue of which it has this significance is its epistemic value”. He defines (2011, 367 fn. 25) the epistemic standard as concerning “what a society, as such, ought morally to do”. However, whereas some other defenders of epistemic views use ambitious scientific analogies to describe the epistemic potential of democracy⁶⁵, Estlund is rather modest about democracy’s epistemic prospects, simply aiming for better than randomness. Nonetheless, the core of his account of democratic legitimacy is built on the *epistemic prospects of democracy: the publicly recognizable epistemic value of democratic procedures*.

In the following, I begin by briefly presenting Estlund’s view, describing how he combines procedural and epistemic modes of justification and yet seeks to avoid the typical problems of each. Then I concentrate on the balance of the epistemic and procedural elements. What is relevant for the purposes of this thesis is that Estlund’s strategy accords a major justificatory role to epistemic elements at the expense of procedural equality. Yet the epistemic part that he prioritizes over procedural equality seems controversial. I argue that, without leaning more on procedural equality between citizens, either epistemic proceduralism moves too far in the epistocratic direction or it is much more modest than it first appears. Additionally, I discuss themes related to disagreement. For the latter part of the chapter I focus on the role that deliberation is granted in the epistemic view, since one of Estlund’s arguments against the justificatory view on the one hand and intrinsic proceduralism on the other relates to the role of deliberation.

Estlund understands current democratic theorizing as characterized by the tension between the goal of substantially just decisions (rising towards the epistemic end) and the fact of political disagreement over the substance (descending towards the procedural end). He maintains that *if substance is available, it should have primacy over procedures*, although the challenge of political disagreement needs to be taken seriously. However, he argues that the latter does not provide sufficient reason to reject all procedure-independent standards. Abiding by mere procedural fairness is always a retreat from substance. If there is a possibility to hold to certain epistemic standards at the expense of the procedural, we should take the more epistemic route. As he sees it, the essential question is “when to retreat and when to hold” (2008, 83). Each of the following retreats toward deeper proceduralism is taken because of the unavailability of required substance, as Estlund often points out. His core claim is that one should not give up any substantial standards merely out of fear of disagreement; rather, one should carefully consider what standards can be retained and what must be given up.

Estlund’s epistemic proceduralism is a hybrid of epistemic and procedural modes of justification – a couple of steps from the pure epistemic end and a

⁶⁵ See for example *Episteme* Vol. 5/1 2008.

step up from the pure proceduralism (see Figure 1 above). In his view, political authority is not built on the actual correctness of decisions, but on a *procedure's tendency to produce just decisions*. The normative essence of the view lies in the idea of public reason: legitimate political authority must be based on justifications that are acceptable to all reasonable or – as Estlund prefers – “qualified” points of view. With the choice of word, Estlund wants to underline the point that the scope of “qualified” should not depend on a Rawlsian idea of “reasonableness”. Yet his term is not free of hidden burdens. His so-called *qualified acceptability requirement* is, according to him, a necessary condition of the legitimate exercise of political power and the main motivating force of epistemic proceduralism.⁶⁶ (I return to the requirement in more detail later.)

According to Estlund, it would be ideal if consensus on the substantially correct solution could be reached. Hence the only justified reason for any deviation from the epistemic end is the unavailability of consensus. According to so-called correctness theories⁶⁷, in which the legitimacy of democratic procedure depends entirely on substantially just outcomes, decisions are legitimate if, and only if, they are correct. However, in diverse communities in which people disagree over what counts as correct, the view runs into difficulties in terms of political discord. Thus, the correctness view suffers from a *problem of deference*. Were the correctness theory valid, those in the minority in a particular decision would have to accept that they are most likely wrong and therefore defer to the view of the majority. That, however, is an unreasonable demand. Reasonable people should be able to disagree over the substantial merits of a particular decision even when they fail to convince the majority (Estlund 2008, 99–107).⁶⁸

The next step is epistocracy. If people disagree over the substantial merits of a decision, the focus shifts to decision-makers. Estlund argues that it is obvious that some people have more political expertise than others. He also maintains that it is natural to associate the ideas of expertise and authority. Nonetheless, inferring political expertise from legitimate authority would consist of an expert/boss fallacy. Mere expertise does not legitimize authority as such. As Estlund puts it (2008, 40), one could always ask: “You might be right, but who made you a boss?” Why should experts be entitled to lead? How should one choose between experts? In Estlund’s terminology, the problem

⁶⁶ As Copp (2011, 241) puts it, Estlund’s QAR is a cousin of John Rawls’s liberal principle of legitimacy (see Rawls 1996, 137). Estlund shares with Rawls the core ambition of justifying democracy in a way that is beyond controversy, so that people can endorse it despite their disagreement on moral matters. Enoch (2009) claims (and refers to a conversation in which Estlund himself also admits it) that because the Rawlsian view is so generally accepted in the field, and Estlund’s case rests on a similar foundation, Estlund actually does not even bother to justify his own case in so detailed a manner.

⁶⁷ Estlund discusses Rousseau as a paradigm exemplar.

⁶⁸ Minority’s right to dissent has usually been seen to have an essential role in democratic procedures.

with epistocracy culminates in the qualified acceptability requirement, according to which “no one is so obviously better ... that there isn’t some qualified point of view that denies it” (Estlund 2008, 22, 30–36, 40). (There are some puzzling parts in retreating from this step that relate to Estlund’s own view, to which I return.)

While Estlund’s own approach is procedural, he warns against retreating to the purely procedural step or even to the fair proceduralist one.⁶⁹ His reasons are the same on both counts. The core of pure proceduralism can be understood in the deliberative context as Christiano explains it: “democratic discussion, deliberation, and decision making under certain conditions are what make the outcomes legitimate for each person. ... [W]hatever the results of discussions, deliberation, and decisionmaking ... they are legitimate. *The results are made legitimate by being the results of the procedure*” (Christiano 1996, 35, my italics). In other words, pure proceduralism (as a non-hybrid version) would mean that only the procedural features of the decision-making process can be counted as a source of legitimacy. On the other hand, “fair proceduralism” (the label Estlund offers for Christiano’s view) would involve some substantial, although not procedure-independent, elements as well (a hybrid).⁷⁰

While recognizing the lure of proceduralism, Estlund both eloquently and comprehensively argues that procedural justifications are actually thinner than many seem to realize. After the entire epistemic residue is peeled away from democratic procedures, what is left is too weak for justificatory purposes. He argues that mere procedural fairness is not sufficient to explain the authority of democratic institutions. He then defines (2008, 65) fair proceduralism as “the view that democratic arrangements are justified by being procedurally fair to participants, and not by any tendency of democratic procedures to produce good decisions”. The fairness of the outcome follows purely from the fact that the outcome was produced by a procedure that is considered just. However, to be procedural enough, in the sense required by Estlund’s argument, fair proceduralism must avoid “appealing to any supposed ability of democratic procedures to make substantively good decisions” (2008, 66). In Estlund’s eyes the main advantage of fair proceduralism is the same as that of pure proceduralism: avoiding the complexity of defining substantial standards.

Estlund seeks to peel the epistemic residue away from fair proceduralism to get a grasp of the essence of non-substantial fairness. He argues that the procedural view must include substantial – that is, procedure-independent – elements, if it is not to be too thin to have enough justificatory power for democratic decision-making procedures. Many alternatives that one might

⁶⁹ He criticizes certain deliberative democrats for failing to realize the hollowness of pure procedure (e.g., Estlund 2008, 30).

⁷⁰ In Christiano’s (2004) terminology, pure proceduralism is a monistic conception, as its legitimacy is based on one singular dimension, and the “fair proceduralism” non-monist one.

assume to be purely procedural are nevertheless not completely *pure* in the end. As Estlund points out, so-called social choice theories test the outcomes of temporal decision-making procedures by comparing them with the responsiveness of individual preferences. Even “deep deliberative democrats” (as Estlund calls Habermas and Waldron, for example) cannot do without procedure-independent criteria. For Habermas it is the independent standard that “would have agreed in an ideal speech situation”. Even “fair proceduralists” such as Waldron, as well as Christiano (whose work is discussed in more detail in the following chapters), need procedure-independent criteria to be able to say why equal treatment of decision-makers requires a certain specific type of equality, not just any equality whatsoever (Estlund 2009, 89).

Estlund presents a dilemma that he considers fatal for non-substantial fair proceduralism. He asks (2008, 6): “[I]f fairness is the main basis of democracy’s importance, then why not flip a coin instead?” According to him, procedural fairness must be entirely independent of not just the value of outcomes but also other non-procedural matters such as advancing interests, preferences, judgments, and so on. He sees *no difference in pure fairness* between democracy and a coin flip, but he assumes that those who are committed to defend the value of fair procedures would refuse a coin flip as a method of decision making.⁷¹ The reasons for resistance would be procedure-independent in Estlund’s view. However, he passes over one key question, namely the definition of procedure-independence: what is procedure-independent and what is actually procedure-dependent? (This is Estlund’s modified version of the leveling-down critique, which I discuss in more detail later.)

A mere concern for controversy is not a good reason to adopt the most minimal standards and principles; on that, there would be considerable agreement with Estlund. Estlund sees that many procedural theorists take nihilist doubts too seriously, which seems to be reflected in “an obligation to ground a normative account of politics on purely procedural values, since supposedly no nonprocedural or substantive standards for outcomes exist” (Estlund 2008, 34). He also takes the nihilist objection seriously himself, but points out that if it is taken to mean that there is *no* truth or *no* acceptable standards, that would be the end of all normative theorizing, as there would be no legitimate basis to prefer any particular political arrangement over

⁷¹ As a non-philosophical curiosity, making decisions by a coin flip can be called “Flipism”. A fictional TV-show character, Frank Underwood, describes it as: “a pseudo-philosophy of life in which the most important decisions are made by the flipping a coin. It was first introduced in the Disney comic book Flip Decision ... in which Donald Duck is persuaded by Professor Batty to make all the most important decisions based on the flipping of a coin. Life is but a gamble. Let flips guide your ramble!” (Walt Disney’s Comics and Stories #149, Vol. 13/5, 1953; House of Cards, Chapter 57; see also https://en.wikipedia.org/wiki/Flip_Decision).

another.⁷² Thus, the relevant question framing the debate, according to him, is not about whether or not to import procedure-independent standards, but about *which standards are too controversial* (Estlund 2008, 34, 83).

So, Estlund's own epistemic proceduralism is situated between these ends, being procedural and yet gaining its legitimacy via epistemic merits. Before concentrating on it in more detail, however, a word on Estlund's theoretical strategy is appropriate. He describes his own way of theorizing as *an approach* (2011, 354–356); he offers arguments, analogies, and examples to increase the plausibility of his view but no systematic defense of all the steps. Argumentatively, Estlund relies more on the burden of proof than offering proof himself (see also Edmundson 2011). The ability to justify democracy on substantial grounds is a seductive promise for a democratic theorist; however, it seems that the epistemic steps on which Estlund seeks to position himself might be too controversial to provide a solid footing.

3.2.1 THE QUALIFIED ACCEPTABILITY REQUIREMENT

The core of epistemic proceduralism is *the qualified acceptability requirement* (QAR): political justifications *must be acceptable to all qualified points of view*. This idea reflects similar tones as Cohen's consensus ideal, discussed in the previous chapter, although, whereas Cohen seeks ideal consensus via actual deliberators, Estlund prefers a more hypothetical setting. The qualified acceptability requirement forms the normative core of democratic legitimacy, in the form of normative consent. Yet, as strategically essential as the qualified acceptability requirement is for his epistemic proceduralism, it is worthy of note that Estlund offers no detailed description of it. He refers to it as "schematic" and seeks to build a convincing case for its plausibility instead of proposing a detailed account. Later he emphasizes (2011, 367) that it is a principle that he argues "more *from* than *for*", though it would be a fundamental thing for epistemic proceduralism to establish. He maintains, "*if* it can be established, *then* legitimacy and authority could be accounted for in democratic terms" (Estlund 2011, 367).⁷³ Prospects of

⁷² Estlund suspects that the avoidance of truth might be one motive behind egalitarian proceduralist attempts. There is a hint of truth there. An egalitarian proceduralist does not, however, need to avoid truth, as such, to the relativist end, and might just be more slightly moderate when it comes to truth than an epistemic proceduralist. Whereas an epistemic proceduralist has to lean on truth, an egalitarian proceduralist is more hesitant about putting too much weight there, as many of them emphasize that the potential fallibility and incommensurability of actual decision-making situations make this ground too weak to hold all the weight that an epistemic proceduralist wishes to lay on it.

⁷³ My own italics in both quotations.

defining the requirement remain one of the most controversial parts of the theory.⁷⁴

Indeed, Estlund himself examines a couple of objections to the requirement (2008, 44–47):

Overexclusion objection: *any qualified acceptability requirement wrongly excludes some points of view (– actual acceptance view)*

Overinclusion objection: *too many objections are being honored (– true objection/exclusive view)*

He maintains that defeating these objections would offer strong support for the qualified acceptability requirement. Yet even if these objections were defeated, one could argue over whether the line has been drawn in the right place in any particular version of the qualified acceptability requirement, as Estlund emphasizes (2008, 49). The overexclusion objection holds that any qualified acceptability requirement is too exclusive. Some points of view are arbitrarily excluded from the circle of acceptability, and then justification needs to be acceptable only to those points of view that are inside the circle. According to Estlund (2008, 45), this objection would advocate an acceptability view that insists that all points of view should be counted as qualified and, therefore, the overexclusion view must be committed to the actual acceptance view. The latter maintains that all objections are justification-defeaters and that any objection Y against a view X must be accepted, whether or not the objection Y seems valid/informed/fair/just. While there are certain cases in which the actual acceptance view seems definitely valid, when acceptance matters independently of the justification for the objection, such as in cases of sexual consent, but these are not numerous. There are more or less always some objections to every view; therefore, requiring actual acceptance would imply that no law can ever be legitimate. Yet this practical hurdle is not, according to Estlund, such a serious problem (2008, 43–47). He offers no precise case against the actual acceptance view, merely insisting that it is “radical and skeptical”; nevertheless, he points out that he is defending the qualified acceptability view as a necessary condition for legitimacy. According to him, as necessary conditions, actual and qualified objections are compatible because the qualified acceptance view claims that legitimacy requires there to be no qualified objections, while the actual acceptance view just sets the condition more broadly as no actual objection. Yet neither of them denies that something else can be a justification-defeater. He could take a stronger stance and defend qualified requirement as a necessary and sufficient condition for legitimacy. However, he notes (2008, 48) that he “wishes to avoid contradicting (or endorsing) the actual acceptance

⁷⁴ In *Ethic's* debate issue (2011) on *Democratic Authority*, both Copp 2011 and Gaus 2011 concentrate on this theme in their critique – as do many others (see also Enoch 2009 later in the chapter).

view”. The reason for this is the role played by the requirement in the whole approach in general, as it is “meant not to establish legitimacy of laws produced in a certain democratic ways, but to show that they can meet a requirement of legitimacy that certain other important views cannot”. Here he has epistocracy in particular in mind (Estlund 2008, 43–48; see also Gaus 2011).

The overinclusion objection view would hold that too many objections are being honored by the qualified acceptability requirement. According to Estlund (2008, 47) the crucial question is: “Why should objections based on false doctrines be thought to defeat justifications that employ true premises and sound reasoning?” Estlund calls the fictive defendants of the objection “Truth Lovers” to indicate that they care for the truth, not just mere qualifiedness, with the goal that objections based on false views should not be allowed to defeat justifications. According to “the *true objection view*: the only qualified objections should be true ones” (Estlund 2008, 51). Estlund argues that “[t]his line of reasoning, however, is fallacious” (Estlund 2008, 50–52; see also Gaus 2011, 280–285). Nevertheless, as Gaus points out that, it is not exactly clear what this fallacy consists of. Apparently it is related to the inconsistency of the two following premises (Gaus 2011, 281):

- (1) *asserting that one who loves the truth will reject the Qualified Acceptability Requirement because it gets to the way of truth combined with*
- (2) *the possibility that Qualified Acceptability Requirement is itself the truth.*

Gaus (2011, 281) presses his argument by asking: “Is Estlund claiming that one can consistently love the truth and accept his Qualified Acceptability Requirement (as true) and that the ‘fallacy’ involved in the true objection view is a sort of (false) repressed premise that these are necessarily incompatible?”⁷⁵ Mere disagreement over the truth of the latter would not count as a fallacy, however, but simply a false conclusion (Estlund 2008, 50–52; Gaus 280–285).

Ultimately, Estlund’s aims are rather modest here. He admits that nothing he has said shows that the qualified acceptability requirement is true, rather

⁷⁵ Gaus stipulates another form of the potential argument, in which the fallacy might be found (in which a premise deemed false is used in an argument which is supposed to prove it is false). However, in Gaus’ view this would lead to problems with the scope of truth. According to Gaus, the scope of the truth might cause trouble in any case. As Estlund’s theory is epistemic, he needs to take a stance on truth. Estlund’s view is based on the assumption that there can be a correct answer to the question of what ought to be done politically (2008, 25). He seeks to define substantive standards as minimally as possible in order to accommodate various conceptions of moral truth. And yet it seems that attaining robustness in relation to truth is more complicated. Gaus argues that even the minimal conception might exclude, for example, certain indexical notions of truth (see Gaus 2011, 275–277). Yet these themes are beyond the scope of this thesis.

than the true objection view. His goal is (2008, 52) “only to point out that it, too, would be a truth” and thus the exclusive view should not gain any advantage “derived from the idea of loving the truth”. In addition, he holds (2008, 52) that, without that advantage, the question turns to the basis of legitimate coercion. He claims that Truth Lovers fail to elucidate “what basis there is for thinking that people are permitted to treat each other in that way: to coercively enforce laws even when one’s only basis for doing so concerns matters about which people can reasonably disagree”.

The previous worry is related to the question of the insularity of the qualified. Who has the right to define what counts as qualified/disqualified according to epistemic proceduralism? How is the group of qualified citizens, C, defined? Estlund notes that it would be a fatal flaw in the view if the approach had the consequence that only qualified points of view could say what counts as qualified. He additionally presents (2008, 53) an additional principle: AN (acceptance of which is necessary). This he frames as follows: “No doctrine is admissible as a premise in any stage of political justification unless it is acceptable to a certain range of (real or hypothetical) citizens, C, and no one else’s acceptance is required.” AN has to be acceptable to C not to be self-defeating. Nonetheless, Estlund maintains that there might be other conditions concerning admissibility in addition to AN (Estlund 2008, 53–54).

3.2.2 LATENT EPISTOCRATIC TENDENCIES OF EPISTEMIC PROCEDURALISM

In a later work (2011) Estlund supplied some hints regarding what could characterize the set of qualified citizens. He suggests that a person’s point of view might count as disqualified in two ways: either because of the point of view or because of the person representing it. The point of view is disqualified “if, for example, the person does not conceive people as equals in certain ways” (2011, 364). Estlund points out that merely holding a false comprehensive doctrine is not a reason to count someone as disqualified; rather, people count as disqualified “for failing to hold certain views, such as, ... that all people are morally free and equal” (Estlund 2011, 363). Furthermore, a point of view is disqualified “if the person does not accept that even views that are mistaken about some things can be qualified” (2011, 364). That is actually a sort of second-order consideration, since besides concerning an aspect of a person’s qualification, the point also relates to a person’s view of the standards of qualification. As Estlund (2011, 364) puts it, “being qualified requires having certain views about who is qualified”.

Although Estlund does not provide a description of the qualified acceptability requirement, these further qualifications seem to narrow the scope of the qualified considerably, even to the extent that differences between epistocracy and epistemic proceduralism could diminish noticeably depending on interpretation. To illustrate this, I have developed a typology of “qualified” in a similar vein as Estlund’s own “Truth lovers”. It seems to me

that of five (or six, but one seems self-contradictory) hypothetical types of persons, only one type would count as qualified in his view:⁷⁶

Reasonable Reason lover⁷⁷ *defends qualified views herself and understands which views count as qualified*

Reasonable Tolerant *defends qualified views herself but does not understand which views counts as qualified, too inclusive*

Reasonable Elitist *defends qualified views herself but does not understand which views count as qualified, too exclusive*

(Unreasonable Reason lover) *(defends unqualified views himself but understands which views count as qualified – a self-contradictory type)*

Unreasonable Tolerant *defends unqualified views himself and does not understand which views count as qualified, too inclusive*

Unreasonable Elitist *defends unqualified views himself and does not understand which views count as qualified, too exclusive*

It is worth pondering that the group of qualified persons appears to be rather limited; indeed, only the Reasonable Reason lover would count as such. Considering the requirements for being qualified provokes the question of how the view ultimately differs from epistocracy if understood as the epistocracy of the qualified, as it seems that epistocracy could be interpreted similarly. Estlund's defense of epistemic proceduralism is built on the assumption that it is the epistemically best procedure among those that are acceptable to the group of qualified citizens C. Meanwhile, according to Estlund, epistocracy includes three tenets (2008, 30):

1. *The Truth Tenet: there are true (at least in a minimal sense) procedure-independent normative standards by which political decisions ought to be judged.*

2. *The Knowledge Tenet: some (relatively few) people know those normative standards better than others.*⁷⁸

⁷⁶ It remains open whether Estlund is talking about viewpoints or persons. But as he writes (2008, 57) about "hypothetical qualified citizens", I assume that my way of counting them as persons here is in line with his view.

⁷⁷ Even though Estlund does not define C as a set of *reasonable* citizens as he wants to emphasize that the view does not entails dependence on Rawlsian idea of reasonableness, but, rather, defines it more abstractly as the set of qualified citizens, it seems after all that here "reasonable" might be suitable.

⁷⁸ Estlund says (2008, 278 fn. 21.) that he slides "between the ideas of actual wisdom, capacity to wisdom, and so on" as long as he believes that the point holds equally well across the variants.

3. The Authority Tenet: The normative political knowledge of those who know better is a warrant for their having political authority over others.

At least to a certain extent these tenets of epistocracy seem to fit with epistemic proceduralism as well. Epistemic proceduralism has to assume the first, the Truth Tenet, at least in some form⁷⁹, since, according to Estlund (2008, 35), refuting the tenet would leave only procedural values on the table and no basis for substantive standards. Estlund himself objects to epistocracy by questioning the third, the Authority Tenet, based on the qualified acceptability requirement, claiming that any chosen group or person would be subject to controversy and would not for that reason pass the general acceptability criterion; that would not be a problem for epistemic proceduralism if the group consisted of the qualified. Finally, as disconcerting as it sounds, it seems that at least empirically, the second, the Knowledge Tenet, also appears to fit together with epistemic proceduralism. The group of Reasonable Reasonlovers appears to be rather small potentially, since most people would hold at least some unqualified beliefs.⁸⁰

In this light it might be that the group of Reasonable Reason lovers is a small one. This would be a problem, especially for those defending *actual pluralism* who reject the idea that controversies could be restrained by reasonability or other qualified condition, but claim that normative justifications should include all the parties (see, for example, Newey 1997; see also Ceva 2016, Ch. 1). Even if one were to remain agnostic with regards actual pluralism this still seems worrisome when combined with the previous problems with answering the over-inclusion objection. Many commentators have criticized the arguments Estlund offers against epistocracy as *ad hoc* (see, for example, Copp 2011; Anderson 2009). David Copp has argued (2011, fn. 6) that, “Estlund allows mere speculative objections to epistocracy to count as qualified”. Might the reason for the difficulty that Estlund’s epistemic proceduralism faces in developing an argument against epistocracy be the fact that the views are rather close to each other? From this perspective, it seems that drawing the line between epistemic proceduralism and epistocracy is not such a simple task. How could one manage to do so? The size of the group of

⁷⁹ Estlund does deny some interpretations of the tenet (2008, Ch. 2) but needs to allow some versions, which seems to be relevant here.

⁸⁰ According to political psychology studies, only 10% of the population seems to hold even a minimally logically coherent set of political views. The number varies slightly between countries, but is nevertheless surprisingly low everywhere (see, for example, Uschanov 2010). Peoples’ sets of beliefs also vary. Or as Gaus (2011, 278 fn. 13) puts it, even people who hold generally reasonable viewpoints might yet advance some pretty crazy specific ideas on some specific sphere of life. (In a sphere of more popular literature, Michael Shermer (2002, 297) even claims that, “Smart people believe weird things because they are skilled at defending beliefs they arrived at for non-smart reasons.”) Thus, that would disqualify them in Estlund’s books.

qualified depends, of course, on the criteria for qualifiedness. According to Estlund (2011, 364), a person qualifies as qualified even if he holds unreasonable views on, for example, whether there is a god/gods, or physicality of mind, and so on. However, he offers no clarification of which views count and which do not; there are “no general boundaries between qualified and disqualified views” as he states (2011, 366). He points out (2008, 60) that he aims to “include a wide variety of points of view, including many false ones, because a wide variety of views seem not to disqualify their owners from being owed acceptable reasons to justify state coercion”. Thus the group might ultimately not be so small.⁸¹

A stronger commitment to procedural equality and inclusivity could solve the problem. Currently equality plays only an instrumental and thin role in Estlund’s account. It seems to be a mere consequence of the qualified acceptability requirement. He argues (2008, 190), for example, that “[i]t would be epistemically costly to let power ... determine the course of political decision making”; adding that “the advantage of universal suffrage derives from the deeper principle of the qualified acceptability requirement” (2008, 37). I discuss democratic equality in relation to Estlund’s view at the end of this chapter.

Yet if (and only if) the qualified acceptability criteria (or reasonability) plays the main role in democratic theory, then it seems to me that there should be *equal opportunity to be qualified (or to reasonable)*⁸² in order to avoid the view’s turning from democracy into meritocracy, because “reasonability” tends to correlate with privilege. Often what is understood as reasonability is linked (at least statistically) with levels of education and social status, and empirical studies show that social status is strongly inherited nowadays (see, for example, Bowles, Gintis and Osborne Groves 2005.)

3.2.3 DECISION FETISHISM, INSTRUMENTALISM, AND THE BALANCE BETWEEN PROCEDURAL AND EPISTEMIC ELEMENTS

As I have said, epistemic proceduralism is a hybrid of epistemic and procedural elements; furthermore, the balance between the two elements raises questions. What is the role and importance of each element? How strict is the line between fair proceduralism and epistemic proceduralism? Proceeding from the procedural end, one can question whether Estlund’s

⁸¹ A similar worry has been expressed in relation to Rawls. Bohman (1996, 74–75) has observed that “[i]f we accept the social facts of pluralism and deep conflict, then we must also wonder whether the scope of what is ‘reasonable for all to accept’ turns out to be so small as to be irrelevant for most political disagreements”.

⁸² For example if democratic procedures are considered deliberative, this would require equal distribution of cognitive conditions for deliberation (on equal political opportunities see, for example, Mason 2006; Phillips 2004).

notion of pure procedural fairness, which he claims to be too weak to justify democracy, is too thin to be meaningful. How much weight would it need? Enough to bring it up to epistemic proceduralism? Or would the actually fair procedural step be enough after all? Thomas Christiano, defender of a more egalitarian proceduralism (see Christiano 2008), calls Estlund's description of the conception of pure procedural fairness a *detached conception of fairness*. Christiano points out that one implication of this conception would be that democracy actually turns out to be a less procedurally fair method for decision making in a group of equals on controversial matters than a coin flip, since democracy responds to the choices made by voters and a coin flip does not. Christiano (2009) pushes the idea of anonymity of this sort even further, asking whether the coin flip lottery should be arranged to cover all possible alternatives, not just those favored by some member of the group, to make it more obvious how strange the idea would be. Nonetheless, one might think that this hardly defeats Estlund's critique, as Estlund uses the coin flip example as a way to bring to the fore the emptiness of mere fairness. In addition, Estlund does not deny the worth of fair proceduralism, he just aims to show that it is not a sufficient basis for democracy's justification.

Another way to challenge epistemic proceduralism is to question the divisional force of the epistemic element. Estlund holds that "democratic authority rests on democracy's tendency to make better than random decisions, and better than alternative arrangements, so far as can be determined within public reason" (2008, 160). According to his view there are three necessary conditions for legitimate rule: first, it has to be acceptable to all qualified points of view; second, it demonstrably needs to have a better than random probability of choosing just policies; and third, it has to be demonstrably better in doing so than the other forms of rule (2008, 8, 98). However, demonstrating the second condition is obviously complicated, as there will always be a certain indeterminacy in saying that epistemic proceduralism is better than random, since it depends on how the alternatives are individuated and evaluated (see, for example, Anderson 2008, 134–135; Christiano 2009, 237).

Estlund seeks to demonstrate the fittingness of epistemic proceduralism to these conditions by analogies, a key one of which is a *Jury analogy*, which he uses to model the structure of his own view (Estlund 2008, 7–8, 11–12, 136–137). He also uses it to defend his view, arguing that the parallels between the jury case and the democratic case are "very strong". The (US) jury system, (when working properly) gives legal force to a verdict and also some moral force. It is a decision-making procedure that aims at both procedurally and substantively just decisions, despite the risk of occasionally failing in the latter respect. The jury system illustrates both the substantial and the procedural strengths of epistemic proceduralism. On the one hand, a jury would enjoy no authority if its decisions failed to be generally substantively just; on the other, the validity of a jury's decision is not based on whether they are right in a particular case or not. What matters is the general tendency to get things right

through this sort of procedure, which is the basic justification structure of epistemic proceduralism as well.

As illustrative as the analogy is, it also frames the setting in a specific, favorable way and blurs the picture a bit (Anderson 2008), glossing over at least one important difference between juries and democracies: juries have a tightly *predefined dual set of options*: “guilty” or “not guilty” according to certain preset standards. Democratic decision making, on the other hand, is a complex process with no fixed set of options. A jury also has retroactive temporal setting, evaluating specific past events against rules made even earlier; whereas democracy is an ongoing process extending into the future. A democratic deliberation process is, above all, a creative construction of policy options. In a jury case the options are limited and there is an answer to the question of whether a jury offers a better than random outcome. In the case of democracy, however, the proper means to define what is random or better than random are absent. Democratic procedures are partly path-dependent; they depend on what problems, agendas, and means are raised, by whom, and at which point, and what answers, solutions, or follow up strategies are created. It is not just the final vote that matters and there are not even the means to tell whether a vote is indeed final on a subject or not. Consequently, there seems to be no set of logically possible policy strategies whereby one could assess what might have been possible in a given historical situation, and where that might have led, compared with what epistemic proceduralism and the alternatives would have done (see also Anderson 2008).

Anderson (2008) has emphasized that the better than random condition is not actually necessary for epistemic proceduralism; however, dropping the condition would diminish the epistemic content of the argument and make it much weaker. He suggests that Estlund could have used empirical evidence based on the studies of existing democracies in his comparison, but as Gaus (2011, 295) points out, this strategy could show that democracy is better than average, but yet not prove better than randomness, if the average is very low. Furthermore, Estlund also uses the non-existence of what he calls *primary bads* in actual democracies as an additional proof of better than randomness. These primary bads include war, famine, economic collapse, political collapse, epidemic, and genocide (Estlund 2011, 163). But this line of argument does not appear as convincing as the other strands as the list seems more controversial than it appears at first sight. The relation of the bads and justice (there are cases in which a war could be just etc.) remains unclear, for example (Gaus 2011, 293–294.) Further, even if in a certain current situation – ‘n’ – these might be non-existent, the situation can be different in ‘n+1’: the world can change in unpredictable directions. What would be the final point of consideration for the better-than-randomness argument? This seems important for Estlund, when the justification of epistemic proceduralism is built on decisions and their substantial merits. More procedural accounts, on the other hand, could put more weight on the importance of equal self-

government of citizens and democratic processes such as the practice of mutual recognition or public manifestations of relational equality.

Outcomes actually provide quite a substantial weight in epistemic proceduralism – not the process of producing them, but the decisions and the procedure-independent standards of valuing the decisions. It is a heavier weight than in other procedural accounts of democratic decision making wherein the process itself is accorded the major importance. How we should explain our intuitions concerning procedural fairness is an open question in the epistemic framework. Christiano (2009), for example, has drawn attention to the intuition that procedural equality sometimes seems to overrun even good decisions. Let us consider, therefore, the decision-making process of choosing the most suitable individual for a certain position. Even if the outcome of the process is an excellent choice of a candidate, it would nonetheless intuitively seem to have failed if some other candidate were mistreated during the process in a way that appears to be unfair: this, despite the fact the chosen candidate might have been the same if the procedure had been fair. Estlund refers to the jury system as an example in which even erroneous outcomes gain their authority via the system. Yet it seems to me it also shows why unequal procedures make us seriously question the authority of a whole institution, at least normative authority, even where a case is actually “correct”. For example, a few years ago in Ferguson, Missouri, a white police officer shot an eighteen-year-old unarmed boy. The circumstances were unclear, and it was obvious that stereotypes and prejudices played a large role in the case. But the US Department of Justice reached the verdict that the police officer shot the boy in self-defense. Yet even after the verdict – which might have been correct – many people had difficulties accepting it since the process had been so unfair in the beginning.⁸³

David Enoch (2009) even accuses Estlund of *decision fetishism*. Enoch analyses two imaginary cases, fictional countries Get-It-Right and All-for-the-Best. Get-It-Right makes (at least generally) better decisions, but the consequences of political decision making in All-for-the-Best are nonetheless better on the whole (reasons for this could be based on the citizens’ sense of participation, dignity, belonging, and autonomy). For many it is not obvious which of these is superior, especially if the consequences of decision making in All-for-the-Best are much better. Therefore it seems that choosing the procedure on the basis of better decisions would in this case count as *decision fetishism*. The option to choose All-for-the-Best is of course also open to an epistemic proceduralist, but then epistemic proceduralism would turn into merely a type of instrumentalism in which it is the consequences that matter, not the procedure-independent epistemic benefits (Enoch 2009, 38–41).⁸⁴

⁸³ The actual Brown case might not match my description, but the main point here is to exemplify intuitions of how procedural justice could matter.

⁸⁴ Estlund might argue that a consequentialist would need to commit to a correctness theory of legitimacy, losing the space between correctness and legitimacy which is precious to the epistemic

Nevertheless, Estlund's qualified acceptability requirement – and epistemic proceduralism that is based on the requirement – represent a type of approach that could be described as a *doctrine of restraint* (Raz 1986, 110; see also Enoch 2009, 44–46), as it refers to disqualifying certain kind of reasons as politically unacceptable: in this case, reasons that are not acceptable to all qualified persons.^{85, 86} One should note, however, that this does not preclude those reasons actually being good reasons; rather, they are reasons that are illegitimate because they cannot be accepted by all qualified persons. In the case of the “Unreasonable Tolerant”, who defends unqualified views and does not understand which views count as qualified, the wrong he commits is that of being too inclusive. It seems that one should have quite a strong case for supporting a view. As Enoch has argued (2009), we should reject the qualified acceptability requirement unless there is a solid case for it. Nonetheless, when it comes to argumentative strategy, Estlund relies more on the appeal of his own approach and laying the burden of proof on others, than offering solid proof himself (see also Edmundson 2011). Let us next focus on another dimension of epistemic proceduralism in order to analyse how appealing it seems.

3.3 IDEAL DELIBERATION AS A TEMPLATE

Estlund has criticized a number of procedural theories on the grounds that they face difficulties in justifying the role of deliberation in decision-making procedures. He has also pointed out that isomorphism between ideal deliberation and actual deliberation is problematic, as discussed in previous chapter. However, it is not entirely clear how democratic deliberation is justified in Estlund's own composition, either. He considers the deliberative situation as “an ideal epistemic situation” (2008, 18). Yet he warns against considering it as constituting the truth, since mistakes can be made even in ideal epistemic deliberation. In order to avoid the problem of second best, he claims that ideal deliberation should be understood as a *template*. This template is to be used *for marking and measuring the deviations from the ideal and devising an epistemically remedial response*. However, to my mind the role of deliberation is unclear in this picture. Why deliberate in a non-ideal

proceduralist. However, Enoch (2009) points out that this would not be the case, at least for indirect consequentialism.

⁸⁵ As noted in footnote 76 of this chapter, it remains open whether Estlund is talking about viewpoints or persons. But he also writes (2008, 57) about “hypothetical qualified citizens” not just points of view.

⁸⁶ This is reflected in the following quote: “According to epistemic proceduralism, the law is legitimate and binding on me even though it is unjust, and this is owed to partly to the fact that the procedure has epistemic value that is publicly recognizable” (Estlund 2008, 8).

way in the first place? I do not wish to argue here, however, that ideal deliberation could not have a role as a description of an ideal state of affairs. Estlund is right in his warnings about what he calls *utopophobia* – suggesting that a normative theorist should not have a “fear of normative standards for politics that are unlikely ever to be met” merely on the grounds that they are unlikely to be met (2008, 14); but if he wishes to present his theory as an aspirational one, this theme appears complicated.

3.3.1 ESTLUND’S IDEAL DELIBERATIVE MODEL

Estlund seeks to answer the question of “how democracy might have epistemic value” (2008, 174). To respond to it he starts from the ideal end, from considerations of how democratic practices might have value if they recalled ideal deliberation. From the value of ideal deliberative practices he moves to the fact of countervailing deviations. He is, meanwhile, aware that aspirational deliberation should not seek to resemble ideal deliberation. Thus, the epistemic version is not prone to similar problems as the Cohenian version discussed in the previous chapter. Ideal deliberation is not a sensible practical aim, as Estlund maintains.

Ideal deliberation nonetheless plays an essential role in the epistemic framework “as a kind of template by which to mark and measure deviations and devise epistemically remedial responses” (Estlund 2008, 175). Estlund names his ideal epistemic deliberation *the model deliberation*, to mark the differences between it and other deliberative ideals, describing its conditions as follows (2008, 173–176):

- 1) *Everyone has full and equal access to the forum*
- 2) *Everyone has the same chance to speak as everyone else*
- 3) *People only say things that they believe will help others to appreciate the reasons to hold one view or another among those that are in question*
- 4) *Anyone whose interests are at stake in the decision is either present or represented by an effective spokes person*
- 5) *Everyone has as much time to speak as they wish*
- 6) *Everyone has equal bargaining power*
- 7) *Everyone equally credits and attends to the contributions of all others*
- 8) *Everyone recognizes (or tends to recognize) a good reason when they see one*
- 9) *Participants strive to address the “devil’s advocate”*

His “own interest in the model deliberation is as a plausible epistemic device” (2008, 185). The epistemic virtues of deliberation include bringing together diverse perspectives, propelling a variety of reasons and arguments into public discussion, and preventing inequalities in wealth and status affecting results, thereby promoting the likelihood of producing good decisions. Yet, interestingly, Estlund does not argue that democratic practices should resemble the ideal deliberation. He prefers actual democratic practices to model *wide civility*, “that gives a principled place for sharp, disruptive, and even suppressive participation under right circumstances, without jettisoning the whole idea of an ideal deliberative situation” (2008, 184–185).

3.3.2 EPISTEMIC TEMPLATE VIEW

A wide civility in the actual deliberative setting sounds interesting (especially in comparison with the wide understanding of deliberation discussed in the next chapter) but the crucial question seems to be its relation to the ideal. What is the relation of Estlund’s ideal model to democratic practices? Estlund argues (2008, 174) that “realistic (nonutopian) democratic practice can have epistemic value despite profound and unavoidable deviations from the ideal epistemic deliberation”. He seeks to avoid “countervailing deviations” as they are problematic, as seen in the previous chapter. In order to avoid them he defends a view in which the relationship between ideal epistemic deliberation and aspirational deliberation is not isomorphic; rather, ideal deliberation should be used as a template. However, he sees that the informal and even more formal official parts of political communication have greater value if they are not restricted by the “egalitarian and public-spirited norms of the model deliberation” (Estlund 2008, 189). The proper theoretical role for the deliberative ideal is, according to Estlund, “a tool of thought and analysis ... a template to lay over actual deliberations in order to identify ... deviations” (Estlund 2008, 204).

What would it mean to use the deliberative ideal as a template? Estlund represents Herbert Marcuse’s recommendation of “selective intolerance” as an example of this sort of strategy in which repetition of the views of those with disproportionate power over deliberation are met with a countervailing deviation of interference. Marcuse originally discusses this idea of counterbalancing in his essay “Repressive Tolerance” (1969[1965]) as a way to cope with dystopic totalitarian regimes. “The function and value of tolerance ... depend on the equality prevalent in the society in which tolerance is practiced” (ibid., 84). Marcuse developed the idea of counterbalancing existing repressing circumstances as a means of pursuing liberty in existing non-ideal circumstances. If the circumstances are non-equal and biased, he recommends selective intolerance against repression. Interestingly, Marcuse also considered the question of who should count as qualified (ibid, 101): “who is to decide on the distinction between liberating and repressive, human and inhuman teachings and practices” (ibid., 101), observing that the distinction

“can be made rationally on empirical grounds [by] everyone who has learned to think rationally and autonomously” (ibid., 105–106).

It is not clear, however, how this idea of counterbalancing would fit with deliberative practices. Estlund suggests (2002, 10–11) “meet[ing] one deviation with another” in a non-ideal situation⁸⁷, because deviations from the ideal affect the process of deliberation and trying to minimize them might cause other problems. Estlund’s own exemplar of countervailing deviations is related to a deliberative situation in which one group has disproportionate control over the debate because of its superior social power. As he maintains, in these kinds of conditions unrestricted freedom of expression could favor the interests of the powerful. Therefore, he suggests that it might actually be better to restrict communication, that is, deviate from the ideal in order that deliberation might lead to more ideal outcomes (Estlund 2002, 10).

3.3.3 DETACHABILITY AND THE TEMPLATE

Although Estlund’s understanding of an unruly informal political public sphere is a wide one, he simultaneously defends a narrow notion of deliberation for the sake of epistemic benefits. He suggests comparison of an actual situation to an ideal in order to identify deviations. One might wonder about the justification for actual deliberation, if ideal deliberation is used as a template and actual deliberation does not aspire to ideal circumstances. Indeed, Estlund asks of more procedural theorists, why deliberate? Yet it seems that the same question is also complicated for his template view. What would be the relationship between ideal deliberation that functions as a template and actual deliberation that seeks no ideals? Potentially, one might think that actual yet non-ideal deliberation would give some hints for the template user in forecasting, but this seems an underestimation of the deviations that Estlund has himself emphasized when evaluating mirroring. The deviations are not easy to evaluate – the inequalities, marginalizations, and structures of oppression are complex, and they impact on behavior in unexpected ways.⁸⁸ Furthermore different deviations might jointly produce effects even more complex.

If one were to go along with Estlund’s solution, what role would be left for the democratic public? What justifies actual democratic deliberation? What is the purpose of it? Would the template model make the actual deliberation process trifling? It seems to suggest as much, as the template can be used as a remedy in whatever manner the actual public functions. If power imbalances

⁸⁷ Estlund also assesses that his countervailing deviations strategy would be compatible with the wider deliberation view (at least the Habermasian version of it), but not the mirroring view. (Estlund 2002, 11.) But I wonder would defenders of the wide view be particularly interested in taking that path.

⁸⁸ As I understand it, affirmative action could be interpreted as a mechanism of countervailing deviations. But as the literature on affirmative action shows, it is not an easy solution. See for example Young 1990 & 2000; Moller-Okin 1999; Cohen & Sterba 2003; Anderson 2010, etc.

interfere with the use of reason in democratic discourse, then Estlund's solution is to "find some remedial feature that would support our ability to infer from the imperfect real discourse to conclusions about what would have been accepted if it had been ideal" (Estlund 2008, 194). In this way the considerations of ideal discourse as a benchmark are brought in, and the template used in order to achieve epistemic benefits.⁸⁹

My main worry here is that both the template model and the way in which ideal deliberation is considered as isolated from the unruly political sphere seem to suggest that the democratic sphere and the ideal are somehow detachable from each other.⁹⁰ Estlund's idea is that epistemic benefits are procedure-independent. The value of democratic procedures depends on the epistemic benefits that, in turn, gain their value according to procedure-independent standards. Estlund notes that there is political truth out there, and the democratic ideal indicates that. But what then would be the use of democratic process?

This also resonates with problems of modality when used in political theorizing as discussed by Bohman and Richardson (2009) who argue that modality is often involved in statements that aim at neutrality, such as in formulations of the "reasons all can accept" (what they refer to as RACA). As discussed already earlier in more detail (see Chapter 2.3.3), they emphasize that there is something false about the idea of neutrality that is brought along with this modality. They claim that there is a fundamental difference in a democratic sense, for example, between hypothetical "could accept" and actual acceptance. According to them, the seeming neutrality of this kind of modality offers an illusory hope and, in the end, the democratic theorist will have to work with the difficult elements directly, "with what is actually accepted and with substantive moral and evaluative commitments" (Bohman & Richardson 2009, 254–255).

If there is no need for an actual democratic deliberation process in the epistemic template view, it becomes more understandable that Estlund has changed his view in relation to the importance of political equality in epistemic proceduralism (discussed at the end of this chapter). When considering these difficulties one should note that Estlund argues for the importance of just *results*. He defends "fairness as a tendency of a procedure to produce results that are just" (Estlund 2002, 6). Yet, if the idea is that the lack of equality could be fixed by a template, this solution starts to sound potentially undemocratic.

Estlund is a theorist who highly values ideal normative theorizing, lucidly emphasizing (see especially 2008, Ch. XIV) how human beings' actual limits and their tendency to engage in undesirable behavior might have no relevance for it. He writes (2008, 264):

⁸⁹ Who is to make such a template? As Arneson (2011) points out: "None of us is perfectly rational and none of us knows what a fully reasonable and rational agent would think."

⁹⁰ This worry resonates with what Daniel Weinstock (2008) has called the *detachedness* of epistemic proceduralism.

Consider a theory that held individuals and institutions to standards that it is within their ability to meet, but which there is no reason to believe they will ever meet. ... It would be morally utopian if the standards were impossible to meet, but, again, by hypothesis, they are not. Many possible things will never happen. The imagined theory simply constructs a vision of how things should and could be, even while acknowledging that they won't be. ... So far, there is no discernable defect in the theory, I believe. For all we have said, the standards to which it holds people and institutions may be sound and true. The fact that people will not live up to them even though they could is a defect of people, not of the theory. For lack of a better term, let us call this kind of theory a version of hopeless realism.

He also admits that the theory might not be useful. His point here is a conceptual one. He emphasizes that what is relevant is that even if hopeless and useless, a theory can be a true theory. Of course, this is one of the reasons he suggests his template view, as he acknowledges that approximating a deliberative ideal is not useful guidance for practice (Estlund 2008, Ch. XIV; see also Gaus 2016, Ch. 1).⁹¹

In conditions of political disagreement people diverge with regard to what is just, what is true, what is equal, what is reasonable – yet the need to make decisions remains. And normative democratic theory is often used to find ways to do this in a “wiser” mode – whether or not intended for action-guiding purposes. The interest of this thesis lies in normative procedural theories that may be applied in a political context – idealized perhaps, but political anyway – a context characterized by disagreement.⁹² As Lagerspetz (2010, 55) writes:

⁹¹ Weinstock (2008) considers one obvious counterargument Estlund could propose: “Now Estlund could of course respond that he is offering a philosophical framework for democracy, rather than an account of its institutional embodiment. But I think that this line of response can only be taken so far: a philosophical account, no matter how abstract, must bear some relation to that real-world thing that it is an abstraction of, lest it become an idealization rather than an abstraction.”

⁹² As already discussed, disagreement is one of the major considerations affecting contemporary political theorizing. Democratic theories involve a commitment to some conception of political disagreement, implicitly or explicitly. Meanwhile, the sort of disagreement that is at stake impacts on the way democratic procedures should be theorized: whether it is assumed that disagreement could be overcome ideally and its relevance for the justification of a particular theory. Disagreement is also a topical theme for contemporary epistemology, while epistemological considerations provide useful tools for clarifying disagreement. Nonetheless, some disagreements appear to be “faultless”, which means, roughly, that no party in a dispute needs to be mistaken. Other types of disagreements are “merely verbal”. If disagreements about a certain subject are faultless, then there are no objective truths about that subject matter; if disagreements about a certain subject matter are merely verbal, then they concern a pseudo-problem. Yet many epistemologists are nowadays ready to accept that there can be faultless disagreement (see, for example, essays in Feldman & Warfield 2010). Yet the frameworks differ, as political philosophy operates not just with individuals, groups, evidence, beliefs, and justification, but also with questions concerning power and morality. These dimensions make disagreement complex for

“The problem is not that there is no truth in political issues. The problem is that the role of politics is precisely to handle situations in which the agreement on the content of this truth breaks down, but some decision still has to be made.”

3.4 COMPLICATED EQUALITY AND THE QUESTION OF EPISTEMIC APPEAL

The success of Estlund’s proposed epistemic proceduralism requires that the approach appears to be the most plausible. Yet it is one which makes the task of evaluation complex. Additionally, its plausibility depends on the success of alternatives. A few versions of an alternative, intrinsic form of proceduralism will be discussed in the next chapters. Yet, on basis of this chapter it seems that the burden of proof remains with the epistemic proceduralist. The considerations in this chapter provide a basis for defending intrinsic proceduralism. Yet, before considering a plausible alternative, there is one significant theme to discuss concerning Estlund’s approach: the role of procedural justice. This theme is also relevant to intrinsic proceduralism (discussed in Chapters Four–Six).

For an epistemic proceduralist the role of procedural justice is complicated. It is thought-provoking that Estlund has changed his view in relation to procedural justice between his earlier work (1997) and his major statement (2008), as Ben Saunders points out (2010). (Estlund also seems to discuss *justice* and *fairness* interchangeably.⁹³) In 1997 (174) he wrote: “Democratic legitimacy requires that the procedure is procedurally fair and can be held, in terms acceptable to all reasonable citizens, to be epistemically best among those that are better than random.” He also argued (2002, 6) that “the moral value of democracy apparently depends on a background that is, at least, not too unequal”. Yet in his major statement (2008, 98) he formulated his view as follows: “Democratic legitimacy requires that the procedure can be held, in terms acceptable to all qualified points of view, to be epistemically the best (or close to it) among those that are better than random.” Thus, in 1997 he required democratic procedures to be fair and have epistemic value, but he has since given up on procedural fairness. As he states (2008, 66), epistemic proceduralism “gives little or no role to procedural fairness”. Later he explained (2009): “I develop an account of the nature and point of procedural fairness. I argue that the value of fairness derives from what I call a dynamic

normative political philosophy, as they bring another type of questions into consideration. It is also unclear to what extent contingent, practical disagreement, or the basis for such, should be considered at a normative level.

⁹³ See also Estlund 2008, 69 where he explains this *mutatis mutandis* in relation to substantive justice by saying: “I will use the terms *substantive justice* and *substantive fairness* interchangeably.”

of retreat from substantive values which are either unknown or unavailable for other reasons.” (Estlund 1997, 2002, 2008, 2009; see also Saunders 2010.)

Estlund requests certain procedural elements that relate to procedural fairness for epistemic reasons. He defends “non-cheating fairness”, meaning that once there are defined rules people should obey them, as one would adhere to “the idea of fair play of the game”, as he explains it (2008, 70). He also defends “prospective fairness”, referring to the prospective tendency of procedures to produce just outcomes. “A dictatorship could be a fair procedure in this sense if the dictator produces substantively fair or just laws and policies”, he observes (2008, 70). As mentioned, Estlund argues that the request for procedural equality is always a step back from epistemic, and substance always has priority. He goes so far as to claim that “the idea of fair procedure would not even arise if it were common knowledge that everyone agreed what the correct decision is” (2008, 71; see also Saunders 2010).

Estlund argues that procedural justice (understood in an intrinsic manner) is neither necessary nor sufficient to justify democratic procedures. It seems that he assumes that his qualified acceptability requirement could replace procedural justice, and yet do it in epistemic terms. He argues (2008, 36), for example, that “no invidious comparisons” among citizens concerning their political wisdom would be acceptable according to qualified acceptability criteria. Democratic procedures need to be acceptable for all qualified points of view, and there are qualified reasons to reject invidious comparisons and procedures that give some groups or individuals significantly more say than others. Therefore, inequality is ruled out; for example, unequal voting power would contradict the qualified acceptability criteria and thus be precluded (Estlund 2008, 36–37, 219; see also Saunders 2010).

Estlund has emphasized (2010) that he does not wish to deny that procedural fairness can have value. He just thinks it is very thin. He even admits that there might sometimes be cases when such a thin value is the only option, in the face of disagreement or indeterminacy, but his own approach “makes no use of this particular value” (Estlund 2010, 54). He furthermore states (2010, 54) that “if the majority of important political decisions were ones where procedural fairness ought to be invoked, then epistemic proceduralism would not be explaining enough of the structure of government to count as a general theory of political legitimacy and authority”. Yet he does not think that it would be the case.

If a justification of democratic procedures does not refer to the intrinsic value of democratic procedures, but to mere consequences, it is instrumental in a broad sense (see Arneson 2003, 2009; instrumentalism will be discussed in more detail in Chapter Five). The basic problem with instrumental justifications is that they are dependent on contingent empirical factors. In other words, instrumental arguments are not robust, and democracy can be justified only contingently – only if it produces valuable consequences. Were there other means to produce as many valuable consequences, we would not have reason to prefer democracy. Furthermore, from the instrumental

perspective, inegalitarian institutions are not a problem if they bring better consequences (which would require evaluability of the consequences). This same worry seems relevant in relation to epistemic proceduralism: that epistemic proceduralism can defend democracy only on contingent basis. In Estlund's case it seems that epistemic proceduralism will be contingently democratic if democratic procedures can be held "in terms acceptable to all qualified points of view, to be epistemically the best (or close to it) among those that are better than random" (Estlund 2008, 98). Nonetheless, there is a problem with instrumentalism, according to Rostbøll (forthcoming): "the fact that democratic instrumentalists reject political equality, which is a defining characteristic of democracy on most accounts, raises the question whether it is a justification of democracy as such".

It seems odd for outcome values to dominate procedural equality lexically in the context of democratic procedures. I have caricatured a science fiction example, "Super Episteme", in order to bring this oddity to the fore, simultaneously aiming to highlight some undemocratic tendencies of epistemic proceduralism. Super Episteme is a decision machine, a future system using intelligent, self-learning, big data methods to analyze human beings, cognitive systems, psychology, neurology, physiology, values, cultures, data already known, and the history of all existing societies (the machine example seems justified on the basis of Enoch's point that epistemic proceduralism is ultimately a form of instrumentalism). This Super Episteme decision machine can indicate what would be the best possible solution Y in circumstances X, taking into account all the relevant details with an accuracy of at least *better than random*. Let us assume it has an accuracy of 51% and there is a way to evaluate whether this is so. Super Episteme will provide the required decisions but will make mistakes on 49% of cases. So it seems that Estlund should hold that there would be no need for democracy, as substance would have primacy over procedural equality.

It seems to me that it would be so even if we had a reason to believe that Super Episteme would suggest faintly biased decisions, as far as the biases are random and not based on any invidious comparisons. Let us call this version "Super Episteme 2.0". Say it is publicly known that there is a bug that sometimes randomly fosters the relevance of random viewpoints in the decision-making process, although there is no sign when random fostering takes place, and it is intractable about the particular viewpoints it fosters. Nonetheless it is publicly known that the fostering is random: neither privileging any specific point, making invidious comparisons, nor discriminating demographically, for example. It seems that potentially Estlund might even need to defend this second version, if there were no qualified point of view against the epistemic prospects and if we knew that Super Episteme 2.0 gets it right in 55% of cases, and thus does better than random, as Estlund requested. It seems that all qualified points of view should still be able to accept procedure's epistemic value.

Ultimately, it seems that Estlund's epistemic proceduralism is an interesting approach. He emphasizes many relevant themes for evaluating democratic procedures. One of his strengths also lies in his pointing out certain potential weaknesses in competing views. Estlund describes his method as *a provisional leap* (2011, 357–358), in which the core idea is to offer a plausible and appealing theory, and if it is appealing and meritorious, then later seek to fill in the provisional element.⁹⁴ He admits (2011, 256) that he “give[s] very little positive argument for [his] acceptability requirement” and continues that he concentrates “mainly [on] refuting several objections”. He hopes that “many will find it appealing”, and there is no doubt that it is. Nonetheless it seems that the epistemic justification might not offer such a stable grounding as Estlund wishes. It would be outstanding for democratic theory if democracy could be legitimized via the epistemic route. But in the face of disagreement, I am so far not convinced that epistemic proceduralism appears more plausible than intrinsic proceduralism. In a similar vein I wish to proffer some weight to the more procedural hybrid view and answer core criticisms against it (in Chapters Four–Six).

⁹⁴ He uses classic Arrows theorem as an example of a similar kind of theoretical strategy.

4 CHRISTIANO'S INTRINSIC PROCEDURALISM AND WIDE VIEW

4.1 INTRODUCTION

The third version of deliberative proceduralism which I discuss is Christiano's: proceduralism that builds on equality. This chapter is simultaneously the last chapter of the first part of the thesis, which discusses different deliberative proceduralisms, and the first chapter of the latter part, which studies the intrinsic (or non-instrumental)⁹⁵ worth of democratic deliberative procedures. In this chapter I concentrate on intrinsic deliberative proceduralism. Where epistemic proceduralists seek justification for their approach in the outcomes of democratic procedures, intrinsic proceduralism focuses on the values that are intrinsic to procedures: procedures and procedural interaction, as such, are at the center of emphasis, not merely outcomes. For intrinsic proceduralists, justice is not just an outcome-related question, but is also a property of procedures: one of the inherent qualities of human interaction. This is especially interesting in plural and complex societies. Yet one should not confuse the idea of intrinsic procedures with those of so-called pure proceduralists, who accord no role at all to substantial value commitments.⁹⁶

One of the main strengths of intrinsic proceduralism is that it enables a focus on the dynamics of interaction. How do parties behave towards each other during the processes of democratic interaction that are an ongoing part of everyday life in democratic societies? Procedural aspects have not been very popular in democratic theorizing⁹⁷, although Christiano, whose approach is the main focus of this chapter, is one of the exceptions.⁹⁸ Ceva has also recently

⁹⁵ Some theorists prefer the term *non-instrumental* in place of *intrinsic*. See, for example, Rostbøll (forthcoming). See also fn 137 in this thesis.

⁹⁶ See, for example, Hampshire 2000.

⁹⁷ Potential reasons for that are many, and proper analysis of the causes is, of course, an empirical question. Political philosophers have, however, traditionally focused on more ideal theories. What would reasonable and otherwise ideal decision-makers decide? The absence of consensus accompanied by disagreement, and value conflicts have been seen more as non-ideal circumstances, and consequently not very interesting for normative theorizing focusing on ideals. Thus conflict management has been discussed in the sphere of peace-studies, not by philosophers, and these two areas have been rather distant (see also Ceva 2016, esp. Introduction.)

⁹⁸ Other promising recent procedural approaches in the area include that of Corey Brettschneider (2007), with a focus on the legal realm and rights. Brettschneider (2007) has defended a view according to which the values of democracy are not independent, but an explication of what democracy actually means. Ceva (2016), whose focus is on interactive justice, is discussed in greater detail later in this work along with Jeremy Waldron, who focuses more on juridical themes, and less on questions related to the weighting of intrinsic vs. instrumental values. Waldron also emphasizes that the need to look at the

published a remarkable work in this area entitled *Interactive Justice* (2016). Some of her ideas will also be discussed in more detail in the context of the intrinsic worth of democratic decision-making procedures in the following chapters.

Intrinsic procedural approaches have been challenged by epistemic proceduralists and instrumentalists. By epistemic proceduralism, I refer to the view that political authority is built on a procedure's tendency to produce just decisions. In this chapter I refer to Estlund as the main proponent of epistemic proceduralism (see Estlund 2008). Instrumentalism, on the other hand, refers to the view that the value of democratic procedures is, in the end, instrumental – that the operation of democratic procedures *produces better consequences* over time (Arneson 2003, 122). (The difference between the two is discussed below.) Epistemic proceduralists, Estlund to the fore, warn against retreating to non-substantial proceduralism, maintaining that procedural justifications are thinner than many seem to realize. The core of the allegation is that after the entire epistemic residue is peeled away from democratic procedures, what is left, based on detailed examination, is too weak for justificatory purposes. Mere procedural justice is not sufficient to explain the authority of democratic institutions if it does not appeal to the ability of democratic procedures to make substantively good decisions. Either the procedural view must include at least some substantial, procedure-independent elements, or it will be too thin to have enough justificatory power for democratic decision-making procedures. In addition, as already mentioned, epistemic proceduralists have argued that even hybrids of epistemic and procedural considerations are too unstable if they rely more on procedural elements.

Epistemic proceduralists seem to be on the right track when criticizing entirely unsubstantial stances. However, from that point it does not necessarily follow that one should bring *procedure-independent* substantial standards into the picture. At least logically there is another possibility: substantial standards that are not procedure-independent. In this chapter I describe a hybrid view that rests on values that are at the same time substantial yet not independent of procedure in a broad sense – an alternative that does not lean merely on the outcomes of processes but emphasizes the value of procedures as such. In the following chapter I further develop a proceduralist view that can be described in a similar vein in relation to substantial standards.

That is to say, in this chapter I analyze influential version of *intrinsic proceduralism* as presented by Christiano. He defends democratic procedures because he considers them intrinsically just. Here “intrinsic proceduralism” is shorthand for “intrinsic democratic proceduralism”, as even an intrinsic democratic proceduralist would maintain that most procedures are only

procedural values rises from disagreement (2013, 8): “Exactly because we disagree in our ideals and policy aims, we need to inquire into the structures that are to house and refine our disputes and the processes that are to regulate the way we resolve them, how we (in our millions) resolve disagreements over disparate aims that we severally regard as fundamentally important”.

instrumentally valuable. Yet, as I will argue (with other non-instrumentalists), democratic procedures are different from other procedures in this respect. One should note that Christiano does not himself label his own view “intrinsic proceduralism”. He uses the term “moderate proceduralism”, since “moderate proceduralism implies that democratic process has intrinsic value but it recognizes limits beyond which some restraints must be placed on the process” (Christiano 2008, 298). Yet, as considering procedures intrinsically valuable is characteristic of his view, and as it is also the feature that interests me here, in this thesis I discuss his view under this label for heuristic purposes.⁹⁹

As I mentioned above, this is also the first chapter of the latter part, which focuses on intrinsic proceduralism. Here in this chapter the themes concern understandings of proceduralism, the role of deliberation in intrinsic deliberative proceduralism, and epistemic challenges. Another set of questions relates to the possibility of intrinsic value as such, which is discussed in more detail in the next chapter, Chapter Five. In the following, I first outline Christiano’s approach, and then discuss problems raised by epistemic proceduralists. One challenge for the type of hybrid view that rests on the procedural footing lies in explaining the nature of deliberation. The explanation of the intrinsic value of democratic procedures seems even more complicated (more about that, especially in Chapter Five). Topical questions related to that are how an intrinsic proceduralist would face the instrumentalist challenge by Richard Arneson, and whether democratic procedures can be intrinsically fair. In Chapters Four–Six I argue that democratic procedures can have intrinsic value and that this value could be understood as constitutive.

4.2 CHRISTIANO’S INTRINSIC PROCEDURALISM

Having discussed justificatory and epistemic proceduralism in the previous chapters, I now concentrate on one more approach that combines both procedural and substantive commitments: an alternative for considering the value of democratic procedures that does not lean on the outcomes of processes or their justificatory power but emphasizes the value of procedures as such. As in previous chapters, to keep discussion rooted, I have selected what I consider the most distinguished contemporary approach as the focus of my analysis. Thus, my starting point is the account presented by Christiano in *Rule of Many* (1996), and more comprehensively in *The Constitution of Equality* (2008). For Christiano, democracy basically means “a process of collective decision making for a political community in which the principal stakeholders participate as equals in an essential stage of the decision making

⁹⁹ Ceva uses *intrinsic proceduralism* as a broad label for approaches that focus on inherent qualities of procedures (see, for example, 2016).

and in which that participation plays a central role in the creation of law and policy for that community” (Christiano 2015).

Christiano's approach is a combination of both intrinsically procedural and substantive commitments, yet with a more procedural twist than those of justificatory or epistemic proceduralism. His perspective onto democracy differs significantly from the more epistemic proceduralists by virtue of its procedural take. Christiano does not defend certain procedures on epistemic grounds because they promote substantially just outcomes; rather, democratic procedures are defended because he sees them as *intrinsically just*, stating (2008, 11) that “democratic decision-making has intrinsic value”.¹⁰⁰ He maintains that while public deliberation has instrumental value, “the equality of the process of public deliberation has an intrinsic worth grounded in the requirements of justice” (1997, 243).

Christiano combines democratic proceduralism with substantive values that are not independent of, but fundamental to, democratic process.¹⁰¹ In his view the intrinsic worth of democracy is connected to equality and diversity. Equality, furthermore, is grounded in the dignity of persons and their being authorities in the realm of value. His argument proceeds from humanity to the requirement of equality. Humanity gives humans a special status, that of dignity.

[T]he humanity of a person is that person's capacity to recognize, appreciate, engage with, harmonize with and produce intrinsic goods. ... Persons have dignity because they are capable of appreciating and enhancing the value in the world and this capacity involves the autonomous and self-conscious exercise of their capacities. (2008b, 20)¹⁰²

¹⁰⁰ He even states (2011, 4) that referring to his 2008 book: “It is one of the main aims of my book to show in what way democratic decision-making is an intrinsically just way of making collective decisions in certain contexts.”

¹⁰¹ He describes these outcome standards in following way (2015):

In my conception of the intrinsic value of democracy, there are a number of outcome standards that play a role in justifying democracy. First, we have a collective procedure in order to decide a question. Second, the function of political decision making is to advance the common good and justice among persons, and the thought is that we do better on this score when we make collectively binding decisions. Third, persons have interests in being able to shape the social world in which they live (even if they are not always trying to advance their interests), and these interests are advanced in a democratic decision-making process. The idea behind the intrinsic value of democracy is that a certain way the justification of democracy of pursuing these aims is intrinsically valuable in light of the importance of the aims and in the light of the facts of disagreement and the interests of these equal participants. Democracy's intrinsic value consists in its affording equality in the means by which people pursue their aims.

¹⁰² Dignity is a heavily laden concept, and I will not go deeper into it here than seems necessary for the purposes of the discussion, but I should mention that even if dignity typically has Kantian echoes, the Kantian version of the concept has its challenges. Christiano (2008b), for example, argues that the problem with the Kantian interpretation is that “it is not at all clear how persons can have dignity by

He adds that “the only way to acknowledge this special status of humans as authorities on realm of value is being responsive to this special worth, that each is given her or his due as a human” (ibid.). Therefore, because of this special status, humans should be given the chance to exercise their capacity. “[W]hat is due to this kind of being is that it be enabled to exercise its enormously valuable authority” (Christiano 2008b, 20).¹⁰³ Democracy is then the realization of this demand in the political realm, the realization of public equality. He argues, “democracy is one of the necessary conditions of the public realization of equality in any moderately complex society” (2008, 9). However, the intrinsic value of democracy is conditional. Democratic procedures can have intrinsic value only if they realize public equality (Christiano 2008, Ch. 1, 2008b, 2011, 2–3). (This point – an interesting one, especially concerning the possibility for democracy’s intrinsic worth – is discussed in the next chapter.)

The requirement of the public realization of equality is connected to social justice. Christiano states (2008, 9) that “social justice requires that there be a collective decision-making process for the whole society and that each person has by right an equal say in the collective decisions of their society”. It furthermore entails (2008, 46) that this is done publicly: “social justice requires that justice must not only be done, it must be seen to be done”. So, democratic procedures are those that realize both public equality and also the latter requirement (2008, 46): “In democracy people can see that they are treated as equals.” The authority of democratic procedures is grounded in their realization of public equality. If the procedures fail in this (as is sometimes case when there are, for example, persistent minorities: a sign, according to Christiano, of procedural difficulties and tyranny by the majority),

virtue of their rational nature when there are no values independent of rational nature in terms of which it can rationally justify its choices of ends”. Furthermore, Waldron (2012) points out that the Kantian concept of dignity might have complications for contemporary purposes, as it refers not just to dignity as something beyond price, but also to dignity as a rank, available only to some. Yet Anderson (2008b) has analyzed the Kantian notion of “commanding value” that combines these elements, and enables the transformation of the Kantian understanding of dignity into a universal ethic of honor for all humans. Moreover, the concept can also be historically understood as linked with freedom. James Griffin has defended dignity as the human capacity to “be that which he wills”, with lines of thought originating from Renaissance thinker Pico della Mirandola. Griffin refers (2008, 31) to Mirandola as the origin of the link between freedom and dignity: “God fixed the nature of all other things, but left man alone free to determine his own nature. In this he is God — like. Man too is a creator — a creator of himself. It is given to man ‘to have that which he chooses and be that which he wills.’ This freedom constitutes, as it is put in the title of Pico’s best-known work, ‘the dignity of man’” (Waldron 2012). Waldron himself defines it (2012b) in the following terms: “Dignity, in my view, is a sort of status-concept: it has to do with the standing (perhaps the formal legal standing or perhaps, more informally, the moral presence) that a person has in a society and in her dealings with others.”

¹⁰³ Carol Gould has also defended democracy on the basis of human right to self-determination (see, for example, Gould 2006).

democracy's authority is defeated. Moreover, the absence of persistent minorities can be used as a criterion for a *minimum outcome standard* (Christiano 2008, 288–299). (This is discussed in more detail below.)

4.2.1 FROM DISAGREEMENT TO INTRINSIC PROCEDURALISM

To understand the argument for intrinsic proceduralism, diversity and disagreement also become relevant, as they are the premises from which Christiano proceeds towards his intrinsic proceduralism in the political realm. (The intrinsic proceduralism part is interesting in itself. It seems that it could also be defended independently of some of the other elements with which Christiano combines it. I return to this point both at the end of this chapter and in the later chapters.) Christiano sees certain practical limitations as conditions that have to be taken into account in social structures, even in the idealized versions, stating (2008, 9), “the basic facts about social life ... are the facts of diversity, disagreement, fallibility, and cognitive bias. These facts about persons in societies color everything we must think about how to structure society.” Political disagreement is a crucial element affecting his approach. His argument proceeds from pervasive disagreement to the request for democratic equality. Because we face pervasive disagreements about justice, the common good, and the value of substantive laws and policies, democratic decision making should publicly treat each citizen as an equal. As Christiano (2009, 233) argues: “The principle of equality is an appropriate principle for regulating collective decision-making in the context of significant disagreement.”

What he calls *the common world* portrays an important condition. He argues that if we recognize the challenges of plural societies, namely, the prevalence of diversity, human fallibility, and cognitive bias, then the only way to ensure that people are treated equally is to give each an equal say in shaping *the common world*, “a world in which the fulfillment of all or nearly all of the fundamental interests of each person are connected with the fulfillment of all or nearly all of the fundamental interests of every other person”. As he describes it, the common world presents a set of circumstances that is “marked by a deep interdependence of interests among its members” (Christiano 2008, 80). Thus, the human status of dignity in combination with fallibility, biases, disagreement, and the common world are the facts and conditions that build the case for the request for public equality. From these conditions he moves towards proceduralism.

Why should Christiano's proceduralism be considered intrinsic? Why not simply consider democratic procedures a means for public equality? Christiano does not merely argue against outcome-oriented and instrumental views, he also defends democracy as intrinsically just. He writes (2008, 71) that “the public realization of equality is intrinsically just”, and that democracy

is necessary¹⁰⁴ and an “essential component of the public realization of equality”. He argues that democracy is grounded in the principle of public equality and that understanding this also enables us to understand how democracy is intrinsically valuable (2008, 75–76):

Democratic decision-making is the unique way to publicly embody equality in collective decision-making under the circumstances of pervasive conscientious disagreement [...]. Democratic decision making enables us all to see that we are being treated as equals despite disagreements as long as we take into account the facts of judgments and the interests that accompany them. Because democratic decision-making realizes public equality in this way, and there is pervasive disagreement on its outcomes, it is intrinsically just.

4.2.2 POLITICAL EXPERTISE AND (IN)EQUALITY

Democratic theorists typically defend equal political rights for all adult citizens, yet political questions are often complicated and many lack the expertise to deal with this.¹⁰⁵ Christiano maintains (2008, 116–130) that the moral idea of political equality implies that all adults have the right to participate in democratic decision making as equals. This is one of the controversial questions of political philosophy. Some argue that it is apparent that some people have more understanding of political issues than others, that there are so-called political experts. This is particularly so for epistocrats or epistemic proceduralists such as Estlund, who argues for the existence of political experts, adding that the only reason that they are not given the power to rule is that we are unable to identify beyond doubt who they are. In relation to the question of political expertise, Christiano’s view concerning knowledge and power is interesting. It would seem to imply either that differences in political expertise are not relevant or that there are no relevant differences in political expertise. Christiano is not defending these propositions; rather, he argues that there is too much controversy in these matters. This is something with which an epistemic proceduralist would also agree, while arguing for it on the basis that political expertise does not fulfill the qualified acceptability criteria. The egalitarian proceduralist can make the same argument on the basis of equality of decision-makers because of equal advancement of interests, whereas this strategy is not open to the epistemic proceduralist. Nonetheless, it is a challenging one.

¹⁰⁴ He uses “necessary” in this context himself (2008, 88).

¹⁰⁵ Political knowledge is an interesting area of empirical political studies. The general political knowledge of ordinary citizens is typically quite low, although slightly above average in Finland. Empirical studies have shown, for example, that only approximately one person in ten holds a coherent set of political beliefs. (For a Finnish analysis, see, for example, Rapeli 2010, and for a more general take see Uschanov 2010.)

Estlund questions the isomorphism between substantive and procedural distribution in Christiano's approach. He acknowledges that both face the question, but he thinks that since Christiano wishes to go the egalitarian route, Christiano should have a stronger claim. He asserts that it is not obviously correct that unequal political power indicates unequal regard for people's interests, as Christiano claims. "If some are given more votes than others on the ground that they know better how to promote the common interest, how does this fail to publicly indicate an equal regard for everyone's interests?" (Estlund 2009, 244). According to him, Christiano should be able to argue why educated elites could not make decisions that would treat people's interests with equal respect. If the substantial equality in Christiano's approach cannot offer any additional basis for resisting the allocation of extra votes to experts, Estlund sees that as a larger problem for Christiano's attempts to link substantive values and democratic procedures. "It turns out, then, that the theory of democracy owes very little to the theory of justice, whereas Christiano proposes to link them closely" (Estlund 2009, 244–245).

Yet it seems that Estlund fails to take into account the fact that Christiano's argument presupposes certain conditions: that is, the pervasiveness of disagreement, the diversity of interests among people, the cognitive bias towards one's own perspective, and human fallibility in understanding the interests of others. As Christiano maintains (2009, 238), given these preconditions, educated elites cannot hold an informed belief that they have superior judgement in promoting equality. He asserts that people have fundamental interests "in correcting for the cognitive biases of others, in making the world a home for themselves and of being recognized and affirmed as equals". These interests are not instrumental, not something that could be externalized. Thus, no educated elite experts can conscientiously believe that they could take care of the interests of others better than those persons themselves. He notes, moreover, that the driving force behind these claims is actually social-psychological, not conceptual, since he sees that "[i]t is deeply relevant to a theory of what can be publicly clear to people in political societies" (Christiano 2009, 238). This is also related to the themes discussed at the end of the previous chapter. Recognition and affirmation as equals is something that cannot be outsourced to experts.

When it comes to instrumental reasons, the case for epistemic superiority is a complex one. Why should educated elites *not* believe they have superior judgement under given conditions? There is plenty of recent research on cognitive biases, limited cognitive abilities, and fallibility. Interesting studies in different fields from the ethics of knowing to empirical behavioral economics have strengthened the case that Christiano employs in his approach. For instance, one of the practical problems is that some experience is not easy to explain in a reasoned way or even verbally. Moreover, we are biased towards our own perspectives. We humans tend to see our own choices as more rational than the choices of others. It is difficult to understand the situation from another person's perspective; it requires effort, especially in

cases in which someone with experience lacks the words for, or even the conceptual understanding of, the situation, and yet does not realize it. We also tend to have a higher opinion of our abilities to understand the other's perspective than we should have.

The practical limitations that condition democratic deliberation are also discussed nowadays by theorists conducting conceptual research in the field. For example, the social conditions characterized by disagreement, diversity, bias, and fallibility discussed by Christiano, can be described in terms of *epistemic injustice*. Miranda Fricker (2007) has described the difficulties related to understanding the perspectives of others in normative terms, pointing out that epistemic practices have an ethical dimension as well. This ethical dimension can be made visible with less effort via a negative, that is, via epistemic injustice, since epistemic injustice is often a "silent form of injustice". By epistemic injustice she refers to wronging someone in their capacity as a knower, which, as Fricker highlights, is a capacity essential to human value. It is also one of the crucial elements in the deliberative process. She identifies two distinct forms of epistemic injustice – testimonial injustice and hermeneutical injustice – that are related to fundamental epistemic practices that are also foundational for public deliberation processes: gaining knowledge by being told and making sense of social experiences. According to Fricker (2007, 1, 20), *testimonial injustice* refers to situations in which "prejudice causes a hearer to give a deflated level of credibility to a speaker's word" and in which "someone is wronged *specifically in her capacity as a knower*". Therefore, it occurs in situations in which someone's testimony is not given enough epistemic credit. This credibility deficit can result either from innocent error or it can be systematic. Innocent error can be caused by human fallibility, but systematic structural epistemic injustice is a serious form of epistemic injustice often connected to other forms related to economic, educational, professional, sexual, legal, political, or religious issues. These identity prejudices can be negative or positive, causing credibility deficits or excess credibility. If testimonial injustice is persistent it is even more disastrous for an individual. *Hermeneutical injustice* occurs earlier, when collective interpretive resources – or even more typically, the lack of them – put "someone at an unfair disadvantage when it comes to making sense of their social experiences".¹⁰⁶ These injustices are intertwined with social power, stereotypes, and prejudices. Moreover, epistemic injustices are also vicious because they are latent. As Fricker puts it, epistemic injustice is a silent dimension of discrimination (2007, 21–29).

Giving due credit for everyone's testimony is crucial in the deliberative setting in plural societies. Individuals, even if educated, cannot have

¹⁰⁶ Fricker's basic example of testimonial injustice is a case in which a police officer considers a person's testimony unreliable because the person is black, while for hermeneutical injustice it is a person suffering from sexual harassment in a culture that still lacks the concepts that are needed in order to make sense of the experience for those who have not been victims of the same or similar experience.

knowledge of all the relevant social settings, circumstances, and experiences; sometimes they lack the experience that could help them understand the other's perspective vividly. Some experiences are also what Laurie Paul (2015) has called transformative: experiences that are radically new for us and change us in a fundamental way.¹⁰⁷ The latter can be transformative in the epistemic or personal sense. Epistemically transformative experiences teach us something we could not have learned without them. These kinds of experiences can provide new abilities to imagine, recognize, and even potentially cognitively model similar future experiences. Paul's examples of transformative cases of a personal kind include becoming a parent, discovering a faith, moving to another country, and fighting in a war. One good outcome of these cases is that one might realize that one's understanding is limited, but more often the results are less obvious (Paul 2015a, 2015b).

There are also other reasons, related to instrumental diversity, to favor political equality and public deliberation between citizens. One line of argument employs the cognitive benefits of group diversity. For example, Christiano refers to the empirical studies by Scott Page and his collaborators of how *cognitive diversity* affects the collective intelligence of groups. "Cognitive diversity refers to differences between individuals' perspectives. A perspective is a way of representing or encoding objects or situations. Perspectives constitute understandings of the world, including ways of structuring a given problem and generating solutions" (Hong and Page 2004). According to Page, sometimes groups with high cognitive diversity can outperform experts in problem solving. The logic behind this so-called *diversity trumps ability theorem* is that experts often think alike and thus they are able to find no better solution for a problem as a group than they would as

¹⁰⁷ In an interview (2014) Paul uses modern day vampires as an imaginative example: "We're going to pretend that modern-day vampires don't drink the blood of humans; they're vegetarian vampires, which means they only drink the blood of humanely farmed animals. You have a one-time-only chance to become a modern-day vampire. You think, 'This is a pretty amazing opportunity, do I want to gain immortality, amazing speed, strength, and power? But do I want to become undead, become an immortal monster and have to drink blood? It's a tough call.' Then you go around asking people for their advice and you discover that all of your friends and family members have already become vampires. They tell you, 'It is amazing. It is the best thing ever. It's absolutely fabulous. It's incredible. You get these new sensory capacities. You should definitely become a vampire.' Then you say, 'Can you tell me a little more about it?' And they say, 'You have to become a vampire to know what it's like. You can't, as a mere human, understand what it's like to become a vampire just by hearing me talk about it. Until you're a vampire, you're just not going to know what it's going to be like.'

The question you need to ask yourself is how could you possibly make a rational decision about whether or not to become a vampire? You don't know, and you can't know what it's like. You can't know what you'd be choosing to do if you became a vampire, and you can't know what you're missing if you pass it up. This would be a problem if we faced these choices on a regular basis because what it suggests is that there is a principled, philosophical reason why, when faced with this big choice, we would be unable to reach our epistemic gold standard."

an individual.¹⁰⁸ Yet, when a cognitively diverse group is stuck with a problem, they can employ diverse ways of looking at it, use alternatives in creative way, and therefore find better solutions.¹⁰⁹ The theorem makes the diversity of perspectives a virtue – the very virtue on which equal inclusive public deliberation builds. This is an instrumental reason to favor inclusive public deliberation and cognitively diverse citizenry over political expertise in democratic decision making (Christiano and Bajaj 2017, 386; See also Landemore 2013).

Sometimes the psychological effects of a certain situation make it non-transparent. It is difficult to understand the micro dynamics of decision making from the outside. Why do people in certain situations prioritize things the way they do? As shown by Mullainathan and Shafir (2013), who have been studying people experiencing scarcity, a scarcity of resources affects a person's cognitive processes. By scarcity they mean having less than one feels that one needs in different areas of life, not just extreme cases such as malnutrition or poverty, but also less severe financial scarcity or a scarcity of social relations. How does this cause different social problems and change ways of thinking, making it impossible for those experiencing scarcity to behave in a way that outsiders would consider rational? Why does solving these problems require understanding of the dynamics of the specific type of scarcity? For someone not experiencing the psychological changes caused by scarcity the compulsiveness of the situation is not obvious.

However, one thing to remember is that even if the studies demonstrate practical, existing complications, humans are not stable in their abilities. An understanding of different levels of expertise in the political sphere should not be interpreted as involving a static consideration of human capabilities, as people change in these respects. They can learn to be better decision makers, and therefore it seems that political procedures should enable this learning. Humans are also malleable in less favorable respects. Elizabeth Anderson (2010, 85) describes this as a problem of adaptive preferences: "People adapt to their deprivations, making do with what they have by giving up on larger ambitions." This can also be seen as a problem for subjectivist theories, and a good reason to defend more objectivistic approaches.

4.3 EPISTEMIC CHALLENGE: A MODIFIED LEVELING-DOWN OBJECTION

Another, perhaps more serious, challenge for intrinsic proceduralism lies in problems related to the possibility of leveling down. As already explained (in the first part of Chapter 3.2), Estlund presents a dilemma that he considers fatal for non-substantial proceduralism (in the following, I will call this the

¹⁰⁸ Often referred as a local optimum.

¹⁰⁹ The global optimum.

modified levelling-down objection^{110, 111}). He suggests that (2008, 6), “if fairness is the main basis of democracy’s importance, then why not flip a coin instead?”¹¹² (Estlund 2008, esp. Ch. IV.) Before considering a potential reply to this argument, I wish to elaborate on the typology of proceduralisms in more general Rawlsian terms, and explain why his procedural taxonomy complicates discussion on proceduralism. General taxonomies can be heuristically useful as enablers of broader understanding of a whole variety of alternative points of views. Yet they can also serve us poorly if they are somehow misleading. Ceva points out that when it comes to the merits of proceduralism, political philosophers can both thank Rawls for providing food for thought, and blame him for certain pervasive effects on conceptual and terminological misunderstandings concerning procedures. Rawls has famously distinguished types of proceduralism in his *Theory of Justice* (1971) into “perfect proceduralism”, “imperfect proceduralism”, and “pure proceduralism”. *Perfect proceduralism* would lead to a desired outcome with certainty.

The essential thing is that there is an independent standard for deciding which outcome is just and a procedure guaranteed to lead to it. ... First there is an independent criterion for what is a fair division, a criterion defined separately from and prior to the procedure which is to be followed. And second, it is possible to devise a procedure that is sure to give desired outcome. (Rawls 1999[1971], 85)

For *imperfect proceduralism* there is no procedure that could guarantee the just outcome. As Rawls describes it (ibid., 86): “The characteristic mark of imperfect procedural justice is that while there is an independent criterion for the correct outcome, there is no feasible procedure which is sure to lead to it.” Thus, in both of these cases there is an independent criterion for outcome justice, but the difference is that for the perfect case there is a procedure that guarantees achieving it, whereas imperfect procedures do not always yield the right outcomes, even if they could reasonably be expected to do so. Finally, in the Rawlsian taxonomy *pure proceduralism* is the only alternative in which there is no independent criterion for the correct outcome. The outcome cannot be judged independently since, according to Rawls (ibid., 86), “in this kind of procedural justice the correctness of the distribution is founded on the justice

¹¹⁰ The original non-modified levelling down objection has been presented, for example, by Parfit (1997, 210–211; also by Raz and Temkin among others).

¹¹¹ An earlier version of this has been presented by Charles Beitz (1989, 76).

¹¹² Parfit (1997, 207–208) also discusses the purely procedural and substantial: “In some cases, justice is *purely procedural*. It requires only that we act in a certain way. For example, when some good cannot be divided, we may be required to conduct a lottery, which gives everyone an equal chance to receive this good. In other cases, justice is in part *substantive*. Here too, justice may require a certain kind of procedure; but there is a separate criterion of what the outcome ought to be.”

of the scheme of cooperation from which it arises and on answering the claims of individuals engaged in it” (ibid., 85–86; see also Ceva 2016, 63–67).

However, as Michael Rosenfeld has pointed out (1998), Rawlsian perfect and imperfect proceduralisms are both outcome theories in “procedural garb” (see also Ceva 2016). The procedures are simply instruments for attaining certain outcomes. (Estlund’s epistemic proceduralism would count as an example of imperfect proceduralism in this vocabulary.) Pure proceduralism is thus the only form of proceduralism proper in the Rawlsian taxonomy. “Procedures thus acquire a central role in the realization of justice as they are thought to be capable, if correctly operated, of transferring their properties to their outcomes” (Ceva 2016, 67). However, as Ceva notes, the Rawlsian tri-fold taxonomy of proceduralisms has blurred the picture, blinding us to other alternatives. From that perspective it is more complicated to understand intrinsic proceduralism, as there is not suitable space for the view in this setting. While Rawlsian pure proceduralism can be interpreted in many ways¹¹³, all potential interpretations seem to be motivated by resorting from substance that is a feature that characterizes only the outcomes (Ceva 2016, Ch. 3).

Let us return to the leveling-down theme. It seems that Estlund does have a point in criticizing purely procedural views. Mere fairness as anonymity seems rather thin for justifying democratic procedures.¹¹⁴ However, as discussed, proceduralism is often misinterpreted as Rawlsian pure proceduralism. For pure proceduralism, Estlund’s point might be valid, although, from the perspective of the intrinsic proceduralist, it seems that Estlund is too eager to peel (cf. Chapter 3 and epistemic layers). Christiano is not aiming at pure proceduralism. An intrinsic proceduralist would maintain that democratic procedures involve something that is substantial, yet not procedure-independent. As Saunders (2010) points out, this substantial yet procedural fairness is sensitive to context and the matter being distributed. (For example, we would not consider it fair to resolve sporting contests by means of a lottery either.) It is not sensible to compare it to a coin flip. As

¹¹³ As Ceva stipulates (2016, 67–69), the potential interpretations of Rawlsian pure proceduralism include (1) constructivist description of metaethical reasoning that leads to the formulation of principles of justice; (2) the characterization of the properties of those norms on which social cooperation is based and that legitimize the outcomes of those procedures; (3) an account of what holds societies together; and finally (4) a source of political authority in democratic decision-making.

¹¹⁴ At least in most cases. Yet I am not fully convinced that leveling down to a lottery would always be as bad a choice as many seem to assume. It seems that the use of lotteries in certain situations does involve interesting dimensions that should be more thoroughly considered. Saunders (2009) has noted that proponents of egalitarian proceduralism, such as Christiano, might not have reason to reject lotteries in all potential cases. Christiano criticizes lotteries for producing only a “thin form” of equality. But Saunders points out that, depending on the background assumptions, it might be the case that sometimes one might prefer a lottery as a means of distribution. Saunders considers, for example, whether that might fit with Christiano’s view of how one should cope with persistent minorities.

Christiano describes (2011, 3), there are two points to notice: “One, public equality is a minimal requirement of justice, and, two, it involves a kind of consensus on equality.” He emphasizes, furthermore, that what he aims at is a sort of minimal level – the level that is required for democracy. He notices that there are limits for this (2011, 3), writing, “the idea cannot be stretched very far. If it is stretched too far, it loses its character as a reasonably uncontroversial realization of equality.” Thus, the equality that is a core value of democracy also sets limits on democratic legitimacy.¹¹⁵ Some might argue that this kind of view is circular, but if it is understood that equality is a core democratic value, and without it, democracy cannot exist, I can see no circularity here (for more about this see Chapter Five).

Christiano also notes in his reply to Estlund (2009), that Estlund seems to misunderstand his point. He argues in a sufficientarian way, referring to Harry Frankfurt, that he does not support the claim that more equality would always be better in any circumstances. Equality should be maximized only in circumstances where more would be better. Therefore, he maintains that if there is a genuine level of sufficiency, then equality matters only beneath the sufficiency level. When everyone is above the sufficiency level, equality ceases to matter. Yet he points out that this “does not undermine the thought that equality matters when all or most are beneath the level of sufficiency (which I take to be the normal situation)”. He moreover asserts that Estlund’s leveling-down argument works only in cases in which a sufficient level of equality is easy to meet.

Nonetheless, to be precise, Estlund does not explicitly deny the possibility of the intrinsic fairness of democratic procedures. His argument against hybrid stances – that is, those that are not purely procedural but do not rest on an epistemic footing either – is based on their supposed instability. He argues that putting too much weight on procedural justification would lead to difficulties, as it would make the view instable. This is an objection an intrinsic proceduralist should take seriously. The tricky part of any hybrid procedural view is the connection between procedural and substantial elements – how the elements are knit together and how the knitting it is justified. Epistemic proceduralists stitch the division between substantial and procedural by epistemic criteria, as all the choices are made on an epistemic basis.¹¹⁶ But if no epistemic criterion is used, there seems to be no stable justifiable criteria, Estlund maintains (Estlund 2008, esp. Ch. V). He also argues against the view he calls “fair deliberative proceduralism”, which he attributes to Christiano.¹¹⁷ The fact that fair deliberative proceduralism is neither epistemic nor purely procedural will cause inconvenience. He asserts (2008, 96): “Insofar as

¹¹⁵ In a somewhat similar vein Brettschneider defends what he calls as a “value theory of democracy” (2007, 19): “a truly democratic theory must be grounded in the fundamental, or “core”, values of democracy itself”.

¹¹⁶ Christiano (2009) has also criticized Estlund’s view, arguing that it is instable as well.

¹¹⁷ He counts Waldron and Christiano as proponents of this type of view (see Estlund 2002).

procedural fairness is really the point, the deliberation is superfluous. Insofar as the deliberation is important to the theory, the view shifts away from procedural values and toward epistemic ones.”

The reply to this instability charge depends both on the nature of intrinsic value and understandings of the role of deliberation. When it comes to deliberation it seems that Christiano could answer that the element that joins the justice of procedures and deliberation together is equality. He asserts (1997, 243) that “while public deliberation per se has an exclusively instrumental value in enhancing the quality of decisions in democracy, equality in the process of public deliberation has an intrinsic worth grounded in the requirements of justice.”¹¹⁸ Nonetheless, this procedural equality is not procedure-independent.

Christiano does not deny that democratic procedures, especially public deliberation, also have epistemic value (more about that later). On the contrary, he maintains that public democratic deliberation can help to minimize epistemic difficulties, such as the existence of widespread disagreement, fallibility, and cognitive bias. He refers (2008, 192–193) to three types of instrumental results that are hoped for from democratic deliberation. First, public deliberation generally *improves the quality of legislation*. When the process of deliberation enhances citizens’ understanding of their society and moral principles, the justice of laws and social institutions may be increased. Second, laws tend to be *more rationally justified* in societies that undergo intensive process of deliberation. If deliberation leads to a reasoned agreement among citizens, the legitimacy of society is increased via this process. Third, many think that citizens participating in a process of free and equal deliberation are more likely to *develop desirable qualities*, such as traits of autonomy, rationality, and morality. Yet, as Christiano highlights, the values of justice, legitimacy, and virtue are independent of the process of deliberation that is thought to be causally responsible for their realization. He does not wish to argue that public discussion only diminishes agreement, but, rather, put emphasis on the fact that reaching these results via deliberation is contingent. There is no doubt that these results appeal to our common sense. It seems likely that if people deliberate sedately in a political context free of fear with comparatively equal status, they will often reach better decisions in many respects. They are likely to become more informed, and make fewer decisions based on unsubstantiated prejudices, for example. However, Christiano wishes to stress that empirical evidence supporting the benefits of public deliberation is thin, and not all of it is positive.¹¹⁹ In addition, deliberation is also likely to have

¹¹⁸ Christiano also sees that the instrumental and procedural values of deliberation are compatible with each other (1997, 245).

¹¹⁹ Furthermore, most of the empirical studies are done only on small groups. Generalizing the findings of small group situations into a democratic society might lose their validity (Christiano 2008, Ch. 5).

other sorts of effects, not just desirable ones. It is, for example, likely to bring out more elaborated differences and disagreement, not just eliminate them. A society-wide democratic deliberation might also lead to indecisiveness. Or if non-ideal deliberative circumstances are considered, deliberation can actually have quite devastating consequences. For example, as discussed in Chapter Two and argued by Young and others, deliberation in unequal circumstances might foster a hidden power bias (see, for example, Young 2000, Ch. 1).

Despite the contingency of instrumental benefits, Christiano defends deliberation as a crucial part of democratic decision making. He also maintains (2008, 198): "Public deliberation is one of the main cognitive conditions for effective citizenship." He regards deliberation as elementary for democratic equality in the long run in diverse societies. Equality is one of the main elements in his defense of a *wide conception of deliberative democracy*. In the following I explain in more detail what he means by it, and why this makes Christiano's view different in important ways from the two other types of view discussed in Chapters Two and Three. I discuss intrinsic worth in the following parts.

4.4 A WIDE VIEW ON DEMOCRATIC DELIBERATION

The wide conception of deliberative democracy is maybe the most noticeable difference between Christiano's view and both justificatory and epistemic proceduralism. As Saunders observes in his analysis (2009), the wide conception is the clearest departure in Christiano's approach from a typical deliberative framework, especially from those favoring the Rawlsian legacy and the reasonability requirement. Christiano (& Bajaj 2017, 385) explains that the wide conception endorses many of the core elements typical of the other deliberative views. Public deliberation as a reasoned discussion procedure grounded in competing conceptions of the common good is given a central role. It requires that the equality of all the citizens in a public deliberation is institutionally supported by other necessary background conditions in society. It also requires that, in a well functioning democracy, citizens are committed to the process, open to the arguments of others, and ready to shape or even change their preferences in the course of deliberation. Thus, in most senses, the wide view is quite similar to the justificatory view, for example. Nevertheless, the main difference between a mainstream deliberative view, such as Cohen's justificatory view, and the wide view is related to reasonability. Christiano maintains that citizens should be free to advance proposals based on their own comprehensive doctrines, not just what is narrowly taken as reasonable view (2008, 190–230).

To follow his line of thought, let us look at Cohen's view, one that Christiano has labeled "Cohen's narrow conception of public deliberation" (2008) and later, the "rational consensus conception" (2017 with Bajaj). For Cohen's deliberative view consensus is after all about shared reasons. How should

different reasons be understood and what kind of decisions should be made on the basis of various reasons? *Reasonable pluralism* is an important idea for Cohen (2009a, 6–9), who maintains that the elementary aspect of democratic decision making is that “the kinds of reasons that could be used to justify collective decisions needed to be attentive to the pluralism that lies at the heart of democratic societies”. In his approach, reasonability is connected to equality, as he considers relying on common reason a basis for justification, along with treating people as equals. He sees that the request for reasonability arises from pluralism, especially in heterogeneous societies. Because there are many reasonable views, which have different fundamental elements, both religious and secular, the political argument should “take a place on a terrain that could be endorsed by people with different reasonable views”. Cohen states that his approach is about the political sphere (contra Rawls, for example), as he maintains that reasonable disagreement would not be a problem for it. Thus, a principle of reasonableness is a fundamental part of Cohen’s deliberative ideal. It is supposed to provide a principle for evaluating all the basic institutions of society and guide democratic deliberation when citizens design those institutions. As Cohen (1999, 396) expresses it: “People are reasonable, politically speaking, only if they are concerned to live with others on terms that those others, understood as free and equal, can also reasonably accept.” Cohen’s justificatory view requires that public deliberators exercise a *deliberative restraint*. It requires that decisions can be based only on reasons that all the participants of deliberation can accept as reasons (Cohen 1999; see also Christiano 2008, 203–205; Christiano & Bajaj 2017, 384–385).

However, Christiano worries that deliberative restraint seems to say that to live in a society that implements certain principles that are not accepted by all is worse for the person who rejects those principles than it is to live in a society that does not implement certain principles for the person who accepts them. “[T]he requirement of deliberative restraint rests on the idea that it is more oppressive to persons when we make them live on some terms they do not accept than when we make them live in societies that do not conform to their controversial ideas of justice.” But Christiano (& Bajaj) argue that it is not clear why this asymmetry might be justified. Why would the first case be more oppressive than the second? If the asymmetry cannot be justified, as they maintain, then deliberative restraint should be relinquished. They also claim that the ideal of reasonability carries a serious risk of intellectual stagnation (Christiano & Bajaj 2017, 384–386). Furthermore, Christiano emphasizes that his argument against the idea of reasonability starts from a deliberative impasse. It applies to situations in which there are disagreements over the norms. Only ideal full consensus would do for a situation in which deliberative restraint would not have extra costs (Christiano 2009).

Therefore, the wide conception differs from Cohen’s view, particularly with respect to deliberative restraint and the ideal of reasonability. The wide conception rejects the proposition that deliberators should only appeal to

reasons that can be accepted by all other reasonable deliberators. This is because, according to the wide conception, the moral idea of public equality is fully realized when citizens: “(a) respect the democratic process and basic liberal rights, (b) take other citizens’ interests and capacities into account in the best way they know how, and (c) listen to and sincerely engage with others’ arguments in a democratic forum” (Christiano & Bajaj 2017, 385). However, the crucial point of difference between Cohen’s view and the wide view lies in the type of reasons. According to Christiano, public equality “can be achieved *when citizens appeal to what they take to be the most compelling reasons when justifying political proposals, even if such reasons are not acceptable to all other reasonable citizens*”¹²⁰ (Christiano & Bajaj 2017, 385; see also Christiano 2008, Ch. 5).

4.5 THE WIDE VIEW AND INCLUSIVITY

What are the advantages of the wide view? The wide conception of deliberative democracy is more inclusive than Cohen’s justificatory or Estlund’s epistemic approaches. Since it does not require deliberators to limit their appeals only to those reasons that all can accept (or the qualified acceptability requirement, in Estlund’s case) it allows a wider variety of views of common good and justice to be considered in the political justification process. The wide view seems to be able to incorporate both instrumental and intrinsic values in the same frame. The broader understanding of deliberation accentuates the virtues of deliberation generally. On the one hand, there are general instrumental benefits: increasing the diversity in the process of deliberation can improve decision making because of the positive effects of cognitive diversity on problem solving, as discussed earlier. The wider the variety of points of view, the more effective and just the decisions. More interestingly, the wider view also supports the intrinsic values of deliberation.

While the wide conception distinguishes Christiano’s view from many other deliberative theorists, this kind of request for a broader interpretation of deliberation is not unique. The consensus ideal in particular has been criticized by theorists emphasizing the politics of difference (see, for example, Young 2000; Phillips 1999; Lara 1998; Williams 1998) or radical equality (see, for example, Bohman 1996). For instance, as discussed already, Young requests a wider and more inclusive understanding of deliberative styles, stressing that aiming towards consensus can actually work in an exclusive manner. She asserts that democracy is less exclusive when we recognize deliberation in various forms of communication that, at first sight, do not appear to be an argument, such as in rhetoric or narratives (Young 2000, esp. Ch. 2; see also Phillips 1999; Lara 1998; Williams 1998; etc.). Christiano’s wide view seems to take into account many of the concerns about deliberative

¹²⁰ My italics.

approaches brought to the fore by Young (see, for example, 2000, 25, 40–42) and other theorists of politics of difference.

In a recent article, Christiano (& Bajaj 2017, 386) pays respect to Young and her concern that appealing to shared public reasons in a democratic deliberation process threatens to marginalize some groups and their social perspective: “One worry with the rational consensus conception of deliberative democracy is that some groups’ participation in discussion and deliberation is impeded by the requirement to justify political proposals in terms all can accept”. These worries could be described in Fricker’s terms (see 4.2.2). Some marginalized groups face hermeneutical injustice, meaning that their difficulties are not taken seriously by the larger society because their problems are not familiar to others, and are difficult to articulate in a way that would make them understandable. Meanwhile, their mere testimony recounting the problem suffers a testimonial credibility deficit. This credibility deficit means that the perspectives of persons suffering from it are not given due emphasis during deliberation and if this is repeated it can lead to political marginalization. As Christiano notes, political marginalization can in turn arrest or prevent the development of concepts or schemes for describing the harms in publicly understandable and acceptable terms. Thus, these persons or groups are excluded from full participation in public democratic process. That is a serious threat to the ideal of public equality (Christiano & Bajaj 2017, 385–386).

4.5.1 THE WIDE VIEW AND TWOFOLD CONDITIONS OF DELIBERATION

At a more general level, one recognizable difference between the epistemic approach and the wide view is the dissimilar motivation and justification for the conditions of deliberation. It has not been brought to the fore clearly before, but I think this is a crucial feature which deserves elaboration. As Nomi Arpaly writes (2011, 82–83) there is a difference between moral and epistemic motivations:

The truth seeker seeks the truth, but the morally concerned person qua morally concerned person only need care about the truth when the truth is morally salient, when there are moral stakes. Some will hold that the truth is always morally salient, as any false belief is capable of causing a harmful action. If that is true, the morally concerned person and the truth concerned person would be well advised to act in the same way, and will be similarly nonvoluntarily moved in their beliefs, but even then, there will always be the question of whether it is concern for what is moral or concern for the truth (or some combination of the two) that moves the agent to act in some way or to be influenced in some way.

For epistemic proceduralism the conditions of deliberation seek to define ideal deliberation for epistemic purposes, whereas for intrinsic proceduralism, the conditions of deliberation are not to be defined merely for epistemic purposes but also in the interests of intrinsic egalitarianism. According to the wide view, deliberation has both instrumental and intrinsic value. On the instrumental side it aims to facilitate “the development of informed, rational, and morally sensitive citizenship” (Christiano 2008, 191). Yet the deliberation has not just instrumental but, more importantly in the given conditions, intrinsic egalitarian value. (These themes are also discussed in the final, Coda chapter.)

On the intrinsic side Christiano presents a broad understanding of the deliberative process as embodying three fundamental values: the ideal of equal respect, the commitment to advance justice and the common good in society, and the process of public deliberation as a public realization of equality in itself (insofar as the process is “reasonably egalitarian” as Christiano puts it [2008, 190]). He emphasizes (2008, 197) that in the process of democratic deliberation there are three dimensions of distribution that ought to be constrained by egalitarian principles:

- (1) the distribution of cognitive conditions for effective exercise of citizenship;*
- (2) the distribution of opportunities for influencing the agenda for collective decision-making;*
- (3) equality of respect that citizens hold for each other.*

What makes these distributive dimensions special for Christiano’s approach is that he maintains that these are also the dimensions whereby we should assess a process of public deliberation. This process should be understood as a society-wide operation taking place over the years (Christiano 2008, 192). These egalitarian conditions of deliberation furthermore constitute the practices of the shared community. “Despite the persistence of disagreement, the process of public deliberation can be highly useful activity for the society”, Christiano emphasizes (2008, 192).

The interface of the moral and the epistemic has recently been discussed in relation to moral and epistemic virtues. In those debates, Julia Driver has argued that distinguishing moral and epistemic virtues on an actual trait level is more complicated than it seems. In order to make the distinction successfully, what is distinctively valuable should be selected, and many elements have both epistemic and moral value (Driver 2003). Yet others have argued that the distinctions can be made (see, for example, Arpaly 2011). However, what is relevant here for the purposes of this thesis is recognizing that to satisfy the criteria of intrinsic deliberative proceduralism, the conditions that constrain deliberation are to be chosen to suit not just instrumental purposes but, more importantly, on egalitarian grounds.

4.5.2 THE UNBEARABLE WIDENESS OF THE WIDE VIEW?

Estlund proposes a question for fair proceduralists such as Christiano:

Can political justification appeal to any controversial premises, doctrines, or principles? If this is not always impermissible, then exactly how do all substantive accounts of justice or common good get pushed aside in favor of a procedural treatment of justice for purposes of democratic theory? Or, if controversial doctrines always are impermissible in political justification, then are ... their appeals to procedural fairness ... uncontroversial. ... If only some controversy – say, “reasonable” or “good faith” controversy – is what must be avoided, then what is their argument that all substantive accounts of justice are subject to reasonable controversy and not just the same kind of unavoidable controversy that would plague even their procedural accounts? (Estlund 2002, 8)

As mentioned earlier, however, for Christiano, the full realization of public equality requires citizens to respect both democratic process and basic liberal rights, take the interests and capacities of other citizens into account, and listen and engage sincerely with the arguments of others in democratic deliberation. Citizens should also appeal to those reasons that they consider most compelling (Christiano 2008, Ch. 5; Christiano & Bajaj 2017, 385). (Limits to inclusion are one of the themes discussed in the final, Coda chapter.)

4.6 ISOMORPHISM BETWEEN THE IDEAL AND ASPIRATIONAL DELIBERATION

Christiano’s approach also differs from the two previous views discussed when it comes to the role of the deliberative ideal. Ideals can be problematic if applied to non-ideal conditions; sometimes they may be useless and provide no means of improving non-ideal conditions and, in the worst cases, they can engender worse circumstances.¹²¹ Estlund, who defends a template model himself (discussed in the previous chapter), has expressed his doubts about the role of ideal discourse in deliberative approaches. Why aim at isomorphism between ideal discourse and aspirational discourse? Yet it seems that whether isomorphism carries extra costs also depends on the specific ideals.

¹²¹ Whether distant utopian ideals, as such, are useful has provoked considerable debate (see Chapter One). Even beautiful, dream-like utopias can have negative effects, as Gaus (2016, 13) has recently pointed out: “mere dreams of ideal justice may inspire or give hope, though they may also lead to hopelessness, despair, and cynicism. To wake from a dream of a world of perfect justice and confront the realities of our social world, without any way to connect the dream to the problems and questions arising in our social world, is all too likely to disorient thinking about justice.”

Against this background, it is interesting that Brennan and Pettit (2007) have criticized Christiano's democratic ideal as too idealistic. Their general concern is that "normative thinking in social and political philosophy has concentrated on questions of desirability and not given sufficient attention to issues of feasibility" (2007, 263); they pick Christiano as an example. Their worry seems to be that Christiano uses what they call ideal-theory abstraction, whereby differences between the outcomes of an ideal and the second-best option are measured by some "intuitive criteria of approximation" and not in sufficient detail (ibid.). They also mention Christiano's procedural equality as an example of an ideal that it is too utopian. Were it to be used as an aspirational ideal, it would lead to undesirable outcomes. As they explain:

The danger of the ideal-theory abstraction is that it will lead philosophers to go for a soft, visionary focus in their normative thinking and to argue for an idealized system—an idealized democracy or an ideally just society—that is nowhere to be found and that might be counter-productive to try to establish. (Brennan & Pettit 2007, 261)

They seem to worry that theorists such as Christiano are not taking into account the fact that trying to approximate the ideal as such is not the best strategy, something which could be quite different from the most intuitive version. They further suggest that, in order to select appropriate principles according to which an alternative strategy might be developed, the distance between the ideal and the one that could be implemented should be measured by comparing outcomes (Brennan & Pettit 2007; see also Räikkä 2014, Ch. 3).

I do sympathize with their worry. Sometimes applying the ideal to non-ideal circumstances can have counterproductive effects, and taking that into consideration should be integral to philosophical normative considerations. Making educated predictions is complicated, even for empirical specialists¹²², and political philosophers are in no way professional "deliberation predictors" who can say in advance where actual discourses will lead. While consideration of the various potential effects of procedures, of what could happen, is part of normative theorizing, the actual discourses are full of surprises, and that is part of their attraction: their creative unpredictable potential. Yet it seems that in this case Brennan's and Pettit's target is not an optimal one. First, as Räikkä points out at a general level (2014, 41–42), even if it seems from the outside that someone has sufficiently considered what might be the second-best strategy, it can be that this is not the case in actuality. For example, Christiano does not differentiate strategies for ideal and non-ideal deliberation, unlike the two deliberative theorists discussed previously (i.e., Cohen and Estlund). In fact, this seems one of the core strengths of his approach. Christiano (2015) maintains that "this ideal is one that can be approximated to a greater or lesser extent". Secondly, Christiano seems to take these difficulties into account better than many alternative approaches. Yes, it still might have counter-

¹²² See, for example, Tetlock 2015.

productive effects; I am not denying that. What is relevant here, however, is that the main defenses of Christiano's approach are procedural equality and wide deliberation. Wide deliberation is, from the start, a less demanding ideal, which seems to be one of its main advantages. The inclusivity of the wide view makes it in some respects more realistic, even if, in others, idealistic as well. Abandoning the reasonability condition is an especially crucial element here. As Christiano (& Bajaj 2017, 385) asserts: "the wide conception of deliberative democracy may be more realistic than the rational consensus conception". One advantage of the view is that it is not dependent on an assumed purity of procedures; therefore it has broader scope. It is not an ideal theory of interest only in considerations concerning ideal decision making in ideal circumstances. It takes diversity, human fallibility, and cognitive bias into account more seriously than epistemic alternatives. These less ideal features of complex societies and human beings are regarded as additional reasons to emphasize the fundamental interest of equal treatment. Yet the view does not give up on normative ideals.¹²³ It is not a mere non-ideal theory, a second-best alternative. The principle of equality is crucial here. Indeed, Christiano (2009, 233) writes: "The principle of equality is an appropriate principle for regulating collective decision-making in the context of significant disagreement." The principle can also be used as guidance as to what feasible states are better approximations of justice when the ideal cannot be reached (2008, 39–42). Nonetheless, the principle of equality fits ideal circumstances as well.

One reason why Christiano's approach might seem to some to exemplify an overly idealistic approach also lies in its proceduralism and in how the effects of that aspect might be somewhat untypical. Hints of this appear in the detail of Brennan and Pettit's asking for a comparison of outcomes. Yet, in the case of the intrinsic approach, measurement should not focus on outcomes, but on procedural elements. Outcomes might be useful as signals of certain problems in the process, but they should be considered carefully. Christiano's minimum outcome standard is a useful tool for the purposes of public equality and inclusivity. It is an instrument for tracking the limitations of the applications of the wide view, while the concept of a persistent minority is a sort of idealization in itself. If there are persistent minorities, this should be treated as a sign that requires attention. Are there certain groups in the deliberation process that are not given enough credit for understanding their own interests? Or are their claims systematically overruled? Christiano discusses different interpretations for the outcome standard, suggesting one of minimal preference satisfaction, which states that "a group of people is being treated unjustly when its interests are not being satisfied above some threshold". This kind of minimum outcome standard would impose a constraint on the democratic process, yet it would not provide a fully outcome-oriented view of

¹²³ "Justice does not obey the 'ought implies can' principle entirely. In part it serves as an ideal to be approximated." (Christiano 2008, 36)

evaluation, as Christiano notes.¹²⁴ He calls this kind of view “moderate proceduralism”. As long as justice is conditional, fair procedures legitimize decisions even when they are unjust. Yet one should note that the minimum outcome standard is by no means sufficient for the realization of equality (Christiano 2008, 288–299).

One of the assets of Christiano's view that is also related to questions of the ideal and the aspirational is his stance on the desirability of agreement, discussed earlier. He maintains that deliberation should not seek to increase the tendency towards agreement. The two sets of reasons for this claim include, firstly, the unfavorable consequences of agreement and, secondly, the advantages of disagreement. On the unfavorable consequences of agreement, he writes that the “problem is that in a world in which the facts of diversity, fallibility and cognitive bias are ubiquitous, prolonged periods of agreement suggest the presence of intellectual stagnation and oppressive domination of one group over others”. Disagreement, meanwhile, is actually a fruitful condition: “While agreement may contribute to the stability of society, disagreement and diversity of view are amongst the most fertile conditions for the realization of the justice and virtue effects” (Christiano 2008, 196). Christiano sees the process of deliberation as a process of trial and error; it serves a useful purpose in excluding errors and forms of ignorance and increases disagreement in society. This also supports the claim that intrinsic proceduralism suits the stronger emphasis on interactive justice (see Chapter Six).

4.7 ON THE CURRENCY OF EQUALITY

One element that seems controversial in Christiano's approach is that he argues for equality of wellbeing. While he discusses the merits of wellbeing, it remains unclear why he chooses it as the currency of equality, instead of equality of capabilities or some other currency (2008, Ch. 1).¹²⁵ Corey Brettschneider (2011) also emphasizes this, claiming that Christiano's conception of equality is sectarian, and he seems to have a point. As I see it, one potential alternative for equality of wellbeing that could potentially be less sectarian could be *equality of political capabilities*.¹²⁶ Yet the equality of

¹²⁴ For example, Phillips has defended the use of outcome equality as a check point for equality of opportunity (Phillips 2004).

¹²⁵ Christiano also writes (2009, 231) that “fairness is a feature of collective activities, processes and procedures *that varies in part of depending on the nature of the enterprise*”. Thus, it seems that he would be in principle open to varying the elements depending on the context.

¹²⁶ Bohman emphasizes that Aristotle believed that deliberation requires equality: the same general capacities, education, and even cultural values, although for Aristotle this meant excluding part of the people from deliberation. Bohman (1996, 109) maintains: “Only equality of political capacities makes deliberation fully democratic.”

capabilities would be a better precondition for the deliberative process than the core substantial value. I will return to this question in the following chapters, but the main thing of note here is the perception that intrinsic deliberative proceduralism could potentially be defended on the basis of different interpretations of equality. Furthermore, equality is not the only alternative for a core value of intrinsic proceduralism, which has been recently defended on the basis of a freedom argument (Rostbøll 2015). Rostbøll prefers to call his approach non-instrumental rather than intrinsic, although discussing basically the same idea apart from a different core value (see Rostbøll 2015 and forthcoming; and also Chapter Five of this thesis). But for the purposes of this chapter, I suppose the intrinsic proceduralist could take a more minimalist and pluralist stance towards an interpretation of equality. In plural societies, minimalism in theoretical commitments is an alternative less prone to charges of sectarianism, and it seems that intrinsic proceduralism, as such, does not require a commitment to any specific form of equality.

My aim in this chapter has been to provide grounds for defending egalitarian proceduralism against the epistemic critique. One promising line of argument is provided by Estlund who argues that procedural justice is unnecessary if there is substantial consensus available. That might be so, but in the current situation that seems like an odd place to start.¹²⁷ I would say that Christiano's approach seems to provide a much more interesting starting point. One main challenge for the type of hybrid view that rests on a procedural footing lies in explaining the justification of deliberation. Yet it seems that Christiano could face that challenge. Public deliberation can be justified on the basis of democratic equality.¹²⁸ However, while deliberation can be justified via equality, it seems to me that Christiano should be able to show that the value of democratic procedures is intrinsic, that it is not instrumental. To make sense of the intrinsic worth of procedures, it seems that one should focus on the democratic procedures themselves, as they have certain special features that are relevant to this goal. That is the theme of the next, fifth chapter.

¹²⁷ Simone Chambers has expressed the idea that consensus forming should not be considered a decision-making procedure (1995, 250): "discourse is a long-term consensus forming process and not a decision procedure."

¹²⁸ Waldron writes (2013, 14): "We certainly do need a sophisticated philosophical understanding of the layers of value that are implicated in the assessment of political institutions. Somebody has to make sure that we do not lose sight of the dignitarian and ontological elements. Someone has to consider how these questions of honor and dignity, political justice and respect, stand alongside the criteria we use (like Rawlsian justice) for evaluating the output of our politics. They don't fit easily together—that much, we can accept from the value-pluralism of Berlin. But they are not to be neglected."

5 THE INTRINSIC VALUE OF DEMOCRATIC PROCEDURES

5.1 INTRODUCTION

In this chapter I analyze and defend the intrinsic value of democratic procedures. Estlund (2008, 86–87), who argues against intrinsic proceduralism, defines it as a view in which the value of democratic arrangements

does not depend on any qualities of democratic decisions other than whether they are democratic in two senses: (a) decisions must be made by democratic procedures, and (b) they must also not unduly undermine or threaten [retrospectively or prospectively] the possibility of democratic procedure into the future.

Further, he regards it as “a particular kind of flight from the substance” (ibid., 86). Estlund is skeptical about the possibility of a plausible and appealing version of intrinsic proceduralism. Yet for me, given the contingency and difficulties of justificatory and epistemic versions of proceduralism, intrinsic proceduralism seems a tempting option.

Intrinsic procedural approaches have been influentially challenged lately from the direction of both epistemic proceduralism and instrumentalism. As discussed earlier, Estlund seems to be on the right track when criticizing purely procedural approaches. However, what seems crucial is that his dynamic of retreat seems to ignore a possible alternative (or family of alternatives). That is to say, despite the problems of purely proceduralist approaches it does not necessarily follow that one should bring wholly *procedure-independent* substantial standards into the picture as the core value, as epistemic proceduralists do. (As argued in Chapters Two and Three and also here, substantial procedure-independent standards carry their own complications.)

In the fourth chapter, I presented another possibility: an approach based on substantial standards that are nevertheless not entirely procedure-independent. This hybrid view lays emphasis on values that are substantial yet not independent of procedure in a broad sense – an alternative that does not merely lean on the outcomes of processes but emphasizes their value as such. Following Christiano, I present a promising candidate of that type: intrinsic proceduralism.¹²⁹ Christiano defends democratic procedures because he sees

¹²⁹ Christiano does not himself label his view “intrinsic proceduralism” but he defends the intrinsic value of democracy. I first came across the label in a positive context in the work of Ceva (see, for example, Ceva 2012, 2016) who uses it to refer to approaches that focus on the inherent qualities of

them as intrinsically just. One main challenge for the type of hybrid view that rests on a procedural footing lies in justifying deliberation. Yet, as discussed in the previous chapter, it seems that a defender of the intrinsic worth of democratic procedures (here shortened to an “intrinsic proceduralist”) could face that challenge. Deliberation can have both instrumental and intrinsic value. Christiano, for example, maintains that on the intrinsic side it can embody the ideal of equal respect, the commitment to advance justice and the common good in society, and public realization of equality in itself. He also defends dimensions of the distribution of deliberation that ought to be constrained by egalitarian principles, such as cognitive conditions for effective exercise of citizenship, the distribution of opportunities to influence collective decision making, and equality of respect. Thus, despite the contingency of instrumental benefits, deliberation also has an egalitarian function (Christiano 2008, 192).

However, while deliberation could be justified via democratic equality, the intrinsic proceduralist should also be able to show that the value of democratic procedures is not procedure-independent. If it were, intrinsic proceduralism would count as a subtype of epistemic proceduralism. Yet the explanation of the intrinsic value of democratic procedures is complicated; many candidates fail at the task, as discussed below. Thus, in this chapter I concentrate on the possibility of the intrinsic worth of democracy, and on whether democratic procedures could be valuable as such, not just instrumentally or for their prospective outcomes. Could there be a possible and plausible version of non-instrumentally justified democracy?

In order to make sense of the intrinsic worth of procedures, one should focus on democratic procedures themselves, as they seem to have certain special features that are relevant for understanding their intrinsic worth. The questions discussed in this chapter evolve especially from instrumentally oriented, critical insights. Instrumentalists evaluate democratic procedures on the basis of their consequences. Yet the consequences are to be interpreted both as direct and indirect outcomes, thereby not only including mere decisions but also other types of outcomes. Arneson has presented (2003) influential instrumentalist viewpoints that reject the possibility of intrinsic value of democratic procedures. He asserts that there is no intrinsic value that could not in the end be interpreted via instrumental value. In what follows, I examine his argument, and consider whether democratic procedures could have intrinsic value. I also analyze potential candidates for what could be considered the source of intrinsic value, although it seems that most of them are prone to Arneson’s instrumentalist criticism. However, there is one exception. In the latter half of the chapter, I suggest that the value of democratic procedures should be understood in a constitutive manner.

procedures. But, as mentioned, Estlund (2008, especially Ch. 5) also uses the label, although in a less positive tone.

There are different ways to understand constitutive value. Interesting work related to intrinsic worth and constitutive relations has been done lately by Anderson (2009), Ceva (for example 2016), Kolodny (2014a, 2014b), Jeremy Moss (2009), and Rostbøll (2015, forthcoming). In the third part of the chapter, my reflections take inspiration from their work. The minimalist intrinsic proceduralism I end up defending is a combination of these approaches, while not fully equivalent to any of them. It brings together into a coherent perspective many elements from the work of Ceva (2016) and Rostbøll (forthcoming). Ultimately, I maintain that the justification of democratic procedures should consist of a notion of *constitutive value* with an undetachable norm of an *egalitarian relationship* as its core. Democratic procedures constitute this valuable egalitarian relationship, which cannot be conceived independently of procedures. (In the Coda chapter, I return to the concept of deliberation and consider how intrinsic proceduralism fits together with a deliberative view, sketching a combination of minimalist intrinsic justification and wide understanding of deliberation.)

5.2 THE POSSIBILITY OF INTRINSICALLY VALUABLE PROCEDURES

In this section I discuss two types of justifications for democratic procedures, instrumental and intrinsic (or simply non-instrumental as some prefer; see, for example, Rostbøll forthcoming). Typically (non-democratic) procedures merely have instrumental value. I maintain, however, that democratic procedures are exceptional in that they have intrinsic value in addition to instrumental value. Nonetheless, most scholars – even those who also favor non-instrumentalist justifications – think that instrumentalist justifications for democracy are powerful. As Kolodny (2014b, 290–291) maintains: “To be sure, a large part of the justification of democracy is simply instrumental.” Democratic procedures are instruments that are valuable because of certain outcomes. Indeed, Arneson, a defender of a purely instrumentalist view himself, argues (2003, 122) that “what renders the democratic form of government for a nation morally legitimate (when it is) is that its operation over time produces better consequences for people than any feasible alternative mode of governance”.

Yet instrumentalists differ from each other in their account of the merits for which they consider democratic procedures valuable. Some of them value democratic procedures for *strategic* reasons (see, for example, Arneson 2009; Barry 1989; Buchanan & Tullock 2003; Christiano 2003): by including every citizen in the collective decision-making process, democracy takes everyone’s interests into account. Some others value democratic procedures for *epistemic* reasons. As discussed in Chapter Three, they might maintain that democratic processes are more likely to result in better decisions (see Estlund 2008; Marti

2006).¹³⁰ The third group value democratic procedures for reasons related to *virtuosity*: via participation in democratic procedures people take the views of others into better account, develop more dynamic discussion skills, and so on (see Tocqueville, Mill, and Dewey; for a critique of the virtuosity view see Elster 1997[1986]). Finally, some favor instrumental insights merely because they are skeptical about the alternatives. Ronald Dworkin (2003[1996]) argues that the complexity of decision making is incompatible with the realization of intrinsic fairness in the decision-making process. Therefore, he argues for the evaluation of democratic institutions primarily in terms of outcomes (Christiano 2003, 7–9).¹³¹ What is common to all these different types of instrumentalism, and potentially others, is that the value of democratic procedures is attributed to certain outcomes of democratic procedures (or combination of outcomes).

Here the emphasis is on the plausibility of intrinsic proceduralism. An intrinsic proceduralist would not deny the instrumental merits of democratic procedures, but would in addition hold that democratic procedures can also be valuable as such. To be more precise, logically there are two alternative interpretations for a defense of intrinsic qualities. As Arneson stipulates (2003, 124), *the mixed view* holds that both the intrinsic worth and the instrumental merits have effect on the justifiability, whereas *the purely intrinsic view* holds that the justifiability of democratic procedures is dependent only on their intrinsic qualities. Yet the latter version seems merely theoretical. In this work, intrinsic proceduralism refers to the mixed view that holds that both intrinsic and instrumental qualities are relevant. This obviously raises questions about balancing these two elements, and even potential conflicts caused by this two-fold structure, but I turn to that later.

5.2.1 INSTRUMENTALIST CHALLENGE

Arneson maintains (1993) that “democratic procedures, like all procedures, should be evaluated according to the moral value of the outcomes they would be reasonably be expected to produce”. He presents in his paper “Defending the purely instrumental account of democratic legitimacy” (2003) an intractable argument against the possibility of the intrinsic value of democratic procedures. Considered from his perspective any procedural value ultimately

¹³⁰ David Enoch (2009) has argued that Estlund’s view turns out to be an instrumentalist one as well. Estlund defends a qualified acceptability requirement – or, more precisely, as Estlund himself (2008, 40) maintains, a *family* of requirements – according to which justifications must be acceptable to all qualified points of view. It is the qualified acceptability requirement that is central to making Estlund’s view a hybrid of procedural and outcome justice. Enoch argues that the requirement fails, and that makes Estlund’s view merely instrumental. Additionally, Christiano (2009) argues that Estlund also faces difficulties in balancing the two types of fairness, procedural and substantial, which makes his view instable.

¹³¹ Apparently, Dworkin’s argument is not actually against the possibility of intrinsic value as such.

turns out to be an outcome value of some sort. Arneson contrasts intrinsic value and consequential value (i.e., instrumental value) and argues that the possibility of the first is mere illusion. He writes (2003, 130):

the appearance that we must balance intrinsic fairness and consequential fairness when assessing the democratic political procedure is an illusion because in every case of procedural assessment, it turns out that our conviction that this or that procedure is intrinsically fair or unfair are driven by assessment of the likely or certain consequences of following the procedure.

Thus, he claims that there is no meaningful sense in which democratic procedures could be considered just intrinsically, that all the value of democratic procedures is related to their outcomes (Arneson 1993, 2003; see also Griffin 2003).

Arneson argues against what he considers a pretheoretical commonsense position, one according to which democracy is justified partly because its procedures have intrinsic value and partly because the operation of democratic procedures leads to desirable consequences. He maintains that democratic procedures are valuable only instrumentally. *What appears to be intrinsic at first sight is in the end all about the consequences.* One should nevertheless note that Arneson's scope of consequences is exceptionally broad. In his accounting, consequences involve not just the outcomes of democratic procedures narrowly understood, such as types of decisions, but also all the other types of consequences, such as the consequences of the operation of democratic procedures on people and their rights, for example (Arneson 2003; see also Ceva & Ottonelli 2012).

5.2.2 PROSPECTIVE SOURCES OF INTRINSIC VALUE

An intrinsic proceduralist holds that democratic procedures are different from many other procedures in this respect: they undoubtedly have instrumental value but, in addition, they can have intrinsic value. But what kind of value is that? Ceva has illustrated different types of inherent and instrumental values with a four step taxonomy (Ceva 2016, 83–84) that I have visualized below in a form of matrix:

	Inherent value	Instrumental value
Outcome-related	Due process is likely to lead to outcomes that are inherently just, or contribute to establishing the truth of facts, or both	Due process is likely to lead to outcomes that have positive consequences on or for the parties and on or for society at large
Procedure-related	Due process realizes in itself normative commitments concerning the kind of treatment due to the parties (intrinsic proceduralism)	Participation in due process has positive consequences for the parties

Figure 2.

Accordingly, out of the four alternative quadrants, only the one with procedure-related inherent value counts as intrinsic proceduralism. It seems obvious that the intrinsic worth in question is not related to the consequences of the procedures, but that it is procedure-related. But what could be the normative commitments that a due process realizes in itself? There are different prospective candidates. A proceduralist might wish to try several potential strategies that can rest on: (1) positive impact(s); (2) expression of important value(s); (3) constraining exercise of political power; or (4) authorizing political power (Ceva & Ottonelli 2012). How do they manage against the instrumentalist challenge? There is also a fifth alternative discussed in more detail in the latter parts of this chapter, namely, constitutive value.

Firstly, democratic procedures could potentially be considered intrinsically valuable because they *have a positive impact* on citizens and their civic virtues. This impact is independent of the outcomes of the decision procedure as such. Participation in the mutual decision making process can, for instance, provide citizens with instruments to protect their interests and wellbeing. Democratic participation can also have effect on their virtues as citizens. Taking part in public reasoning processes develops the ability to see things from a broader, public perspective, improving citizens' understanding of their society and fellow citizens. The deliberation process also improves skill in bringing important insights into public knowledge. It can, furthermore, improve citizens' self-esteem and foster societal solidarity. Christopher Griffin (2003) argues against Arneson, observing that democratic procedures are valuable since the universal political participation these procedures enable has

a positive, salutatory impact both on citizens' self-respect and reciprocal recognition (Ceva & Ottonelli 2012).

In this sense, the value of democratic procedures does not directly depend on the qualities of the outcomes as such, but on the indirect impacts that participating in those procedures has on citizens and their civic virtues. Therefore, one of the reasons to value democratic procedures resides in the virtues these procedures are capable of cultivating, which are analytically different from the outcomes. However, this does not count as intrinsic value. Even though the positive impact could be distinguished from the outcomes, it would nonetheless be valued because of the consequences of the procedures in a broader sense. Consequently, valuing democratic procedures because of their impacts would count as valuing them instrumentally in an Arnesonian account. Democratic procedures would be valuable because they are instruments that bring about these positive impacts (Ceva & Ottonelli 2012; see also Arneson 2003).

Secondly, democratic procedures may be considered to qualify as intrinsically valuable because they *express important values*.¹³² For example, Christiano (2011, 2–3) maintains that democracy's intrinsic value is conditional on its expressive function; if democracy manages to realize equality, then it has intrinsic value, he argues. In other words, if democratic practices or the rules of a procedure treat persons according to the requirements of justice, then the procedure could be interpreted as the *locus* where the commitment to just treatment of persons is realized. The institutionalized practices express certain considerations in their structures. The treatment provided by the democratic procedures reveals the kind of considerations of which the institution consists. For example, democratic institutions and practices can be considered intrinsically valuable if they are capable of expressing equal public recognition of persons' moral and social status via equal distribution of power. Such a public recognition is furthermore important for persons' self-respect (Ceva & Ottonelli 2012).¹³³

At first sight, the expressivist argument might seem like a subcategory of the argument based on positive impact. Yet it is not. Ceva and Ottonelli (2012) stress the difference between the positive impact argument and the expressivist argument: "The crux of the expressivist argument is that democratic procedures are valuable because they convey important messages to citizens (notably that they are all equals *qua* worthy of the same consideration)." This expressivist function comes before and is, furthermore, independent of its consequences. Thus, the main point of the expressivist

¹³² Concerning the expression of important values the ideas discussed originate mainly from Griffin, but also from Charles Beitz and Christiano. However, Griffin's view mixes the impact and expressivist views, whereas Ceva & Ottonelli make a distinction between these two.

¹³³ Charles Beitz has criticized (1989, 91–95) the (Millian style of) argument for a plural voting scheme for the educated on an expressivist basis, because giving some more votes than others would express a lesser respect for the others as citizens.

argument is independent of the consequences of such a message (Ceva & Ottonelli 2012). Arneson is skeptical of the idea that the main task of democratic procedures could be expressivist, comprising an expression of recognition of persons' moral equality, for example. More importantly, he also notes that even if democratic procedures had such a function, it would count in favor of the instrumental side, not the intrinsic. He writes (2003, 132): "Expressive consequences ... are consequences to be reckoned along with others." Democratic procedures would not be intrinsically valuable; rather, *they would be valued merely as instruments of expression of certain values* (Arneson 2003). There is only an extrinsic relation between certain normative commitments, such as commitment to equality, and shaping or selecting institutional structures to express the values. Ceva (2016, 83) describes this as an *instrumental form of proceduralism*. Moreover, this kind of justification would count as a weak one – in a similar manner as instrumental arguments generally are. In other words, if democratic procedures are valuable merely as expressive tools, they should be replaced in case better ways to express these values appear. It also seems that a mere expressivist function is not strong enough for justificatory purposes (cf. Estlund 2008).

One should note that these prospective grounds for the intrinsic value of democracy are idealizations of sorts. Most of the approaches defended are combinations of different qualities. Some views mix elements both from the impact view and the expressivist view (see, for example, Griffin 2003). The problems related to the expressivist argument are also of concern to Christiano. For example, Ceva and Ottonelli consider positioning his approach mainly in the expressivist quarter, yet they do not see it as a clear case. They ponder in a footnote (2012, fn. 19) that "Christiano's argument shows how democracy may be valued independently of democratic decisions, yet it does not vindicate its *intrinsic* value: democratic rights are valued *qua* public expressions of the equal status of citizens". Christiano also seems himself to consider the expressivist element as a necessary but not a sufficient one (2011, 2–3):

A democratic assembly realizes public equality by giving each an equal say in the process of collective decision-making. This is the sense in which democracy has intrinsic value. It just is a realization of public equality. A necessary part of this realization is the fact that making decisions democratically expresses the equality of all members of political society.

It seems that the problems involved in the expressivist strategy might not pose serious threats to his approach, if the main elements are elsewhere. However, that strategy would require the other elements to provide a strong enough case for intrinsic worth, which seems to be the main problem. I return to his view and these themes at the end of the chapter when I discuss varieties of non-instrumental approaches.

Thirdly, democratic procedures can be seen as valuable as they function as a *side constraint for the exercise of political power*. Examples of this type of reasoning can be found in views that lay emphasis on the essential connection between democracy and individual rights and liberties. The rights and liberties in question are considered valuable prior to democratic institutions, whereupon the respect in which they are held defines democratic procedures. Their value is considered independent of democratic procedures and, moreover, independent of the expected qualities of democratic outcomes. David Held (1996) calls this kind of conception *protective liberal democracy*. Democracy functions as a tool that protects the freedom and autonomy of individuals (Ceva & Ottonelli 2012).

Clearly the value of democratic procedures is independent of the outcomes according to this constraint type of view. Nevertheless, constraining the exercise of political power would not count as an intrinsic worth of democratic procedures. While democratic procedures would be valuable independently of the outcomes, what makes them valuable is a mere *instrumental relation* to other values. These others are considered the fundamental values and democratic procedures are valued merely as a means of protecting them. Democratic procedures thus function as side constraints for democratic decision-making structures and institutions. As Ceva and Ottonelli expound, procedures are justified as instruments for protecting certain extra-democratic values and principles by constraining the decision-making institutions and behaviors of citizens during political decision making. Yet that does not explain why democratic procedures would be valuable *per se*.

The fourth sense in which democratic procedures might be taken to be intrinsically valuable relates to their potential role in *authorizing political power*. Ceva and Ottonelli develop an idea from Estlund's epistemic proceduralism as an example. Epistemic proceduralism differs from so-called correctness theories in that for the epistemic proceduralist it is not the actual correctness of democratic decisions that matters, but the general tendency of democratic procedures to produce just decisions. Ceva and Ottonelli (2012) assert: "This might induce one to believe that there is an intrinsic value in democratic procedures which makes their outcomes authoritative despite their intrinsic merits." In a similar vein, insights from Cohen's deliberative democracy could also be taken as an example. Yet it seems that from the observation that democratic procedures are not purely outcome-oriented one cannot jump to the conclusion that these procedures are intrinsically just. I doubt that Estlund would favor such an interpretation either. What makes procedures valuable is the need for stability, predictability, reliability, and effectiveness of decision-making institutions, preventing primary bads and also maintaining social trust related to the predictable operation of these institutions. Even if the democratic procedures were not directly instrumental in furthering these aims, these aims are what motivate the acceptance of the procedures rather than some intrinsic procedural value. Therefore, the procedures are valued because of their consequences (Ceva & Ottonelli 2012).

It seems that none of these four strategies can be counted as intrinsic value as such. They might play a part in an argument for the intrinsic value of democracy, but the main weight of the argument has to be elsewhere. While they focus on procedural qualities, the qualities are themselves valued for instrumental reasons, broadly understood. As Ceva and Ottonelli (2012) state, the problem with these strategies is that all of them “draw attention to values and aims which may be realized *through* democratic procedures, rather than those values that are realized *in* them”. Yet, although actual approaches would combine these strategies, it seems that none of them can serve as an intrinsic justification and provide a case against Arneson’s instrumentalist challenge. However, the strategies above are not the only options for an intrinsic proceduralist. Certain features seem relevant for a defense of intrinsic proceduralism that are non-instrumental but relational. This is a fifth alternative, a constitutive one. The intrinsic value of democratic procedures could be interpreted in a constitutive manner. As Ceva (2016, 64–65) argues, “there are modes of human interaction that are inherently valuable as they treat persons in an inherently morally acceptable way; so long as certain procedures are constitutive of such modes of interaction, they are inherently valuable”. If the value of democracy is understood constitutively, it might proffer a way to answer both Estlund’s charge of instability (discussed in Chapter 4.3 of this thesis) and Arneson’s instrumentalist challenge. In the next section I elaborate in more value-theoretical terms what constitutive value could mean and, in the one after, I examine a few more developed proposals for intrinsic value with different forms of constitutive value, as well as Christiano’s version.

5.3 ON CONSTITUTIVE VALUE

I now turn briefly to considerations concerning democratic equality in order to reach a better comprehension of intrinsic value. In his influential article, “Equality and Priority” (1997), Derek Parfit argues against the possibility that equality could have intrinsic value. He distinguishes the value of equality in *telic* and *deontic* views. (However, one should note that Parfit says that his distinction does not concern political equality [see for example 1997, 215], as he seems to interpret political equality in a more singular manner. Yet to me it seems that for a democratic proceduralist the nature of political equality does matter, as there seems to be a variety of potential interpretations that coincide with the value-theoretical views.) Briefly put, according to Parfit, in a *telic* view (ibid., 204), “It is in itself bad if some people are worse off than others.” It would not matter if people were equally well off or badly off, as long as they were equal. (Telic views could be further divided into pure and pluralist ones.) In the *deontic* view, “it is not in itself bad if some people are worse off than others”. In the deontic view we ought to aim for equality “always for some other moral reason” (ibid., 207). Furthermore, deontic views are typically

comparative: equality is a question of comparative justice. People are unjustly treated if they are treated differently from others. Parfit (ibid., 208) summarizes the difference between the views as following: “On the Telic View, inequality is bad; on the Deontic View, it is unjust.” For a telic egalitarian it is irrelevant how the unequal state of affairs has arisen, whereas for a deontic egalitarian it does matter how it came about.

The trouble with the telic view is that it is prone to the leveling-down objection: the idea that making everyone equally badly off by leveling down those better off to the same level as the worst-off must, in one way, be a change for the better because people would no longer be unequal. Yet the typical intuition is that it would be wrong or even monstrous to produce equality by leveling down; in other words, the solution, “if some suffer, let’s make everyone suffer so that no one is treated unequally”, does not sound like a proper solution. Estlund’s modified version of the objection (comparison of the equality of democratic procedures to the equality of a coin flip) aims to show that the proceduralist must base democracy’s justification on something else (i.e., substantial procedure-independent values, in his opinion) in addition to pure fairness. Parfit’s version, on the other hand, aims to illustrate that telic egalitarians need to be committed to appreciating the intrinsic value of the equal outcome to the extent that the idea of inequality’s disappearing is a change for better, however this change occurs. Or to be more precise, as Parfit points out, telic egalitarians could be moral pluralists and care about other things as well, not just mere equality. Thus, according to Parfit, the “objection must be that, if we achieve equality by levelling down, there is *nothing* good about what we have done” (1997, 211). Nevertheless, a telic egalitarian would need to be able to answer that, or admit that equality is not intrinsically valuable.

The deontic view is not prone to the leveling-down objection. The problem with deontological egalitarianism is its limitedness. Parfit uses an example to illustrate this called *the divided world*, in which the world’s population is divided into two unconnected halves, worlds A and B, that are totally unaware of each other.¹³⁴ He then asks us to consider the following example. Which one of the following state of affairs is better?

(1) *Half A at 100 and half B at 200*

(2) *Everyone at 145*

Option 1) is better on average, but, according to Parfit, 1) is worse than 2), all things considered. The question concerns the reasons one would have for preferring option 2) over 1). The inequality between worlds A and B is not deliberately produced, or maintained, and neither does it involve any wrongdoing. As the halves are not connected to each other, one cannot appeal

¹³⁴ It seems heuristically easier to consider two populations living on two different planets to grasp the idea of non-connectedness of the interests of the halves.

to inequality's bad effects. For a telic egalitarian the answer is that 2) is better, since inequality is intrinsically bad. For a deontic egalitarian there is no such explanation available. Therefore, Parfit argues that if one thinks that 2) is better, then, the reason for this must be based on the idea that inequality is intrinsically bad, that is, a telic interpretation (1997, 206, 212).¹³⁵

Nonetheless, Parfit's distinction has also been criticized since it does not capture the scope of all relevant alternatives (see, for example, Moss 2009; O'Neill 2008; Lippert-Rasmussen 2007). As Jeremy Moss (2009) notes, Parfit's distinction seems to combine two separate dimensions: the *outcome/genesis* distinction and the *intrinsic/non-intrinsic* distinction, yet the telic/deontic offers only two combinations. Telic egalitarians would value equal outcomes for intrinsic reasons, while (although not so clearly) deontic egalitarians value equality because it is connected to some other moral value, not because it makes the outcome better. However, it seems that there could be other options. Christine Korsgaard's idea of *extrinsic value* is useful here. Korsgaard (1983) has distinguished between the intrinsic/extrinsic value and the final/instrumental value of goodness. She contrasts *intrinsic value*, according to which something is valuable because of its intrinsic properties¹³⁶, with *extrinsic value*, whereby something is valuable because of some other sources of value. Yet *final value*, when something is valuable for its own sake, is in contrast with *instrumental value*, when something is valuable only as a means to something else. For Korsgaard something can be extrinsically valuable and yet not merely instrumental. For instance, literature and works of art could be valuable as part of the good life. These parts derive their value from something else, yet they are worthy in themselves for the role they play in the good life (Korsgaard 1983). In a similar manner, Martin O'Neill (2008) defends an extrinsic and non-instrumental view of the value of equality, arguing that it results in desirable states of affairs that can be valuable non-instrumentally, but not intrinsically. Nevertheless, O'Neill's interpretation does not seem to fit with egalitarian proceduralists' intuitions. If equality were not intrinsically valuable, then it would be weak if conflicted with something else, something more valuable, as Moss (2009) contends.

According to Moss, deontic egalitarians could value equality for some other moral reasons and yet also intrinsically. This type of relationship counts as *constitutive value*.¹³⁷ Moss (2009, 4) points out in a Korsgaardian vein that

¹³⁵ However, to me the choice does not seem obvious. If what matters is the relative equality of a population that shares a common world (i.e., in circumstances in which a group of people is deeply interdependent on each other in terms of how their world is structured, as, for example, in Christiano's concept of a common world [2008, 80]), then it might not matter in relation to democratic equality if other populations who do not share the world have more or fewer political resources.

¹³⁶ There might be reason to value something for its own sake even if it is not intrinsically valuable. On the "wrong kind of reason problem" see, for example, Rabinowicz & Rønnow-Rasmussen 2004.

¹³⁷ The idea of constituent value can already be found in Aristotle's *Nicomachean Ethics*, how a good life constitutes eudaimonia.

“an object can have intrinsic value in virtue of being *a part of* something that itself has intrinsic value”. Nonetheless, it is crucial that the part that constitutes something that has intrinsic value is something without which the whole would be less good (as the good life is a part of eudaimonia, for example). Furthermore, a constitutive good must contribute to the value of the whole – it must be “one of the reasons why the good has the value that it does”. Were the contribution merely instrumental, it could be replaced with something else.¹³⁸ But if something is constitutively good, then it is not just instrumentally valuable, as it is valuable as a component of the whole yet also part of what makes the whole intrinsically valuable. On the other hand, an instrumentally good component could be causally necessary for an intrinsic good as a whole yet not be a part of the goal or definition of the whole good. The relevant difference here between a constitutive and an instrumental part is the part-whole relation: whether the component has a role in what makes the whole valuable (Moss 2009).¹³⁹

Estlund sees no difference in procedural fairness between a coin flip and democracy. How does he interpret this procedural fairness that he sees as unnecessary for democracy?¹⁴⁰ He does admit that appeals to procedural fairness are attractive as they seek full neutrality from “any conception of good ends other than the procedure itself” (Estlund 2008, 81), but he claims that only full anonymity would fulfill that criterion: “Anything less than full anonymity imports nonprocedural and potentially controversial values” (ibid.). The idea of equality to which he refers seems extremely thin. If I am not wrong, this critique is based on an assumption that democratic justice is of a telic sort, potentially a sort of prospective fairness, because Estlund seems to think that its value can be considered separately. Valuing such a thing for its own sake does seem hollow – the pointing out of which seems to be his explicit aim. Estlund takes the hollowness to count against non-epistemic proceduralism, whereas, for someone with egalitarian sympathies, it seems more like a reason to argue against the desirability of such an interpretation of democratic equality. Why would an intrinsic proceduralist desire such a

¹³⁸ A more theoretically oriented question is whether a constitutive part of a whole could be replaced with something else. Russ Shafer-Landau seems to be implying as much (see, for example, 2003, 75–79). Yet it seems to depend on the context and possible replacement whether the whole, if realized with a new constitutive component, would still count as the same whole. Another question is whether this matters for egalitarian proceduralism.

¹³⁹ This is an interesting debate, yet, for the purposes of this thesis, it does not seem to be a game-breaker, so to speak. It could also be enough for the purposes of this thesis to defend *non-instrumental* value instead of *intrinsic*, as does Rostbøll (forthcoming).

¹⁴⁰ Interestingly, it seems that Estlund has changed his position in respect to the requirement of procedural fairness. In (1997) he maintained that democratic procedures should be both procedurally fair and epistemically valuable, but in 2008 (66) he states that epistemic proceduralism should give “little or no role to procedural fairness” (see also Saunders 2010). The theme is further discussed at the end of Chapter Three.

course? Interpreting democratic equality in that way does not seem to make sense. As Christiano points out (2009, 233), “the equality of a lottery is a pale shadow of the equality in democracy”. Democratic equality is important, but this does not require defenders of democratic equality to be equality fetishists, as Estlund seems to claim.

What kind of egalitarian core could provide grounds for intrinsic proceduralism?¹⁴¹ For a non-fetishist intrinsic proceduralist the task is to provide two explanations. First, one should be able to explain why procedural equality is valuable. Second, the intrinsic proceduralist should be able to explain how procedural equality is connected to substantial yet procedural elements. It seems that what a democratic egalitarian should be after is something thicker than the telic interpretation has to offer. Equality is not important just in itself, intrinsically, but for other moral reasons as well. This would also count in favor of preferring the constitutive interpretation to the telic one. If the value of democracy is interpreted in a constitutive manner, it seems to proffer a way to answer both instrumental and epistemic challenges. Nonetheless, the essential question then is: what is it that “being democratic” constitutes that is of intrinsic value? One promising line of answer for an egalitarian proceduralist is that it is a constitutive part of social equality. The answer is not procedure-independent in itself, as the context does matter. Christiano seems to take the same line about procedural justice. He writes (2009, 231) that “fairness is a feature of collective activities, processes and procedures *that varies in part of depending on the nature of the enterprise*”.¹⁴²

5.4 VARIETIES OF INTRINSIC WORTH

As already noted, the aim of this chapter is to provide grounds for defending intrinsic proceduralism. How could intrinsic proceduralism answer the challenges of the epistemic proceduralist on the one hand, and by the instrumentalist on the other? In order to do so one should be able to provide an explanation of the intrinsic value of democratic procedures that is not merely consequential, outcome-dependent, tautological, or sectarian. At the beginning of the chapter I discussed a few explanations that do not succeed in doing so. What would it require to understand democracy as a good in itself? In the following I consider intrinsic worth both as constitutive and as a part of the egalitarian relationship. It seems that if the intrinsic worth of democracy is understood in a constitutive manner, that will enable the intrinsic

¹⁴¹ In Estlund’s vocabulary, this type of view would be counted as fair deliberative proceduralism. However, that name seems to put too strong an emphasis on the role of deliberation, whereas it is the egalitarian core that seems more crucial a contrast to epistemic proceduralism, the equal moral worth of persons and how well people are compared to each other democracy-wise

¹⁴² My italics.

proceduralist to answer both the epistemic challenge and the instrumental challenge. In this part I lean on Rostbøll's recent threefold analysis (forthcoming), although, to conclude, I point out divergence between his account and the more minimalist version I prefer.

5.4.1 DEMOCRACY AS A CONSTITUENT OF AUTONOMOUS LIFE

An alternative way to explain democracy's intrinsic worth is to refer to the idea that democratic procedures realize certain distinctively human capacities. Democracy can be seen as a constituent of good, autonomous, or, in some other relevant respect, worthy human life.¹⁴³ This idea can have several variants¹⁴⁴, but an essential part of it is that participation in democratic procedures *constitutes the good life*. Anderson (2009, 226) defends democracy as a form of collective autonomy, describing it “as a way of life of a community of equals” and contrasting it with the instrumentalist approach. As she maintains (2009, 222), a standard instrumentalist approach first establishes the intrinsically valuable states which democratic procedures should yield, and then uses these states to justify actions that can causally contribute to bringing them about. She emphasizes that the standard instrumentalist model fits some important aspects of democracy. It can, for example, help to avoid oppression and the neglect of minority voices. Yet she rejects the idea that we could comprehensively identify the proper goals of democratic procedures independently of procedure itself. On the contrary, outcomes should be devised via collective, democratic, decision-making processes. Thus, she argues that democracy should be characterized as a mode of collective autonomy: “democracy is a mode of collective governance whereby citizens work out together what goals they shall share” (Anderson 2009, 222; see also Rostbøll forthcoming).

Anderson also criticizes instrumentalist models for bringing the justification to an end in the wrong place. According to her, certain states of affairs do have intrinsic value in the instrumentalist model, and democratic procedures are considered valuable extrinsically as instruments to bring about these intrinsically valuable states. Yet, as she argues (2009, 223), “[t]he proper point of politics is to serve *people* [and] the states of affairs properly sought in politics do not figure in political justification as intrinsic values”. For her the

¹⁴³ Rostbøll calls views that underline the intrinsic worth of democracy as a constituent of autonomous life *Aristotelian non-instrumentalism*, because they rely on Aristotelian ideas. “First, that the good of a thing depends on the nature of that thing. Second, that the good of a living being is to be able to exercise its natural, highest, and distinctive capacities. Third, that human beings, as by nature political animals, realize their natural and highest capacities through political participation” (Rostbøll forthcoming).

¹⁴⁴ According to Rostbøll, this type of idea has been defended by Hannah Arendt (see, for example, Arendt 1958, 1961; Rostbøll forthcoming). John Stuart Mill has also presented this sort of argument in his *Considerations on Representative Government* (inter al.).

worthy elements are people as autonomous and equal sources of claims. “The proper form of political justification starts from the premise that people are intrinsically valuable, in the sense that they are self-originating sources of claims, and have equal authority to make claims” (ibid.; see also Rostbøll forthcoming).

Anderson goes on to offer a test of intrinsic value of her own (2009, 225; cf. Super Episteme example at the end of Chapter Three, this thesis): “The proper test of the noninstrumental goodness of an activity is not whether we’d prefer to do it, even if it didn’t result in desirable consequences. It is rather whether we’d still prefer to engage in it, even if the same consequences could be brought about by other (passive) means.” What is intrinsically valuable about democratic procedures for Anderson are their expressions of collective autonomy and manifested form of collective learning. These autonomous activities are expressions of our higher faculties, and give higher pleasures. That line of argument would not seem totally obscure to someone like Christiano either, who maintains (1997, 245) that participation in democratic deliberation procedures is valuable as “an essential part of the good life for an individual”.

It seems that this would count as intrinsic worth. Democracy’s justification as a constituent of the good, autonomous life does not seem prone to the instrumentalist challenge. The intrinsic value of fulfilling participation is undoubtedly related to the instrumental value of participating. John Elster (1997[1986], 25) describes the fulfillment gained from democratic deliberation in more critical tones, however, when he writes that “the satisfaction one derives from *political* discussion is parasitic on decision making”. Nonetheless, the point that intrinsic worth might be conditional on instrumental worth does not necessarily seem troublesome, as such, in respect to the intrinsic worth, as long as the latter cannot be *reduced* to the former (Anderson 2009; see also Rostbøll forthcoming).

Yet Anderson’s test highlights a problematic aspect of this type of intrinsic justification: the idea that citizens should prefer to engage in democratic procedures, procedures that are considered to realize certain distinctively human capacities. This is related to the perfectionism underlying the idea, which seems complex. Participation in collective decision making is considered to perfect citizens as human beings: participants become what they are supposed to become by participation. This is related to the view that participation in democratic procedures should be a fulfilling activity. But the problem is that not everyone finds, or even ought to find, that political participation in democratic procedures constitutes the good life. It is not unreasonable that some do not find politics fulfilling. People can have other meaningful conceptions of value.¹⁴⁵ If this is so, however, then the idea seems

¹⁴⁵ One might reasonably prefer *vita contemplative*, for example, to *vita active* in Arendtian terms (Arendt 1958), i.e., a life devoted to contemplating philosophical questions instead of active, public, participatory citizenship.

to be dependent on a certain claim of what constitutes the proper way to live, which one could promulgate, of course, even if not everyone is obliged to agree. But were the claim to be based on the view that political participation constitutes the good life, then it would frame the latter as an outcome standard. If one wished to avoid a sectarian outcome standard, the other option would be to argue that those that find political participation a constituent of the good life should be provided an opportunity to participate – but that is a complicated move. As that opportunity would require quite a lot from others, would it be merely one possible constituent of the good life?¹⁴⁶ In order to provide the opportunity to engage in democratic politics for some citizens (along with providing the institutionalized structures), their fellows would be required to participate in this activity as well. This seems problematic. As Rostbøll (forthcoming) asks:

How can I be morally bound by a political procedure that is justified on the basis of a good that I do not share, and that I am not unreasonable to reject? How can it be legitimate to make me part of an activity and subject to its results simply for the sake of that others can fulfill their conception of the good life?

Thus, even if the structure employed by Anderson (2009), according to which democratic procedures are constitutive of something valuable, is promising, when it comes to the instrumental challenge, it nonetheless seems sectarian. The idea of democratic participation as constituent of the good, autonomous life does not seem to respect the plurality of diverse conceptions of good. It seems that we should not regard one conception of fulfilling human life as a feature that would explain democracy's intrinsic worth.

5.4.2 THE EGALITARIAN EXPRESSIVIST RELATIONSHIP

A second strategy to justify democratic procedures non-instrumentally builds on a specific, important value or norm and then shows how this value is expressed by democratic procedures. Rostbøll (forthcoming) calls this kind of strategy *justice-first non-instrumentalism* “because it justifies democracy on the basis of a norm that is specified in a theory of justice that is developed independently of democracy”. These approaches, just like Christiano's, can employ expressivist elements (see 5.1.2 above); starting from some key value or norm, they then defend democratic procedures on the grounds that the procedures express this norm. The key feature is that the value of the particular norm is explained independently. According to Rostbøll, the value “stems from an *independently conceived theory of justice* in the sense that this value or norm can be and is fully described independently of any reference to

¹⁴⁶ Cf., for example, expensive taste.

the idea or institutions of democracy”. The particular value in question is considered to be somehow fundamental.

These theories can also be motivated by disagreement. As Rostbøll (forthcoming) describes, disagreement theories “begin with the fact that people disagree on the justice of outcomes and argue that this is the reason why democracy must be defended non-instrumentally”. Democracy cannot be defended on the basis of its good consequences if people disagree about what counts as a good in the context. Of course, one could wonder whether disagreement theories are then pure proceduralist ones; but this is not the case. Rostbøll (forthcoming) explains that the “problem of disagreement does not touch on the justice of democratic procedures, in this view, because democratic procedures are tailored to the fact that people will disagree on the substance of justice”.

Non-instrumentalist approaches of this type, of which Christiano’s may be considered representative, can simultaneously be expressivist and disagreement theories.¹⁴⁷ The key value for Christiano is equal well-being.¹⁴⁸ He defends democratic procedures as intrinsically valuable because they are public expressions of the principle of well-being. In this view, if democratic procedures manage to realize equality, then they have intrinsic value. The disagreement aspect is also vital, as Christiano (2015, 237) defends democracy as “an intrinsically justified way of dealing with disagreement on matters of public concern in the context of collective decision making”. As already noted, he considers even democracy’s intrinsic value as conditional on its expressive function (Christiano 2011, 2–3). “The principle to be defended is the principle that well-being ought to be distributed equally by the institutions of society” (Christiano 2008, 25). Moreover, “the equal dignity of persons grounds the fundamental value of well-being and the generic principle of justice” (ibid.). However, it seems that Rostbøll (forthcoming) makes a valid point when he claims that “Christiano’s justification of democracy relies on democracy’s ability to promote the justice-based aim of equal advancement of interests”.

In comparison to the previous variant of intrinsic worth’s focusing on constituting autonomous life, the expressivist variant seems at first sight to take the threat of sectarianism into account, as it starts from disagreement. What is more, it emphasizes democratic egalitarian relations as its core. The problems is, however, as discussed in 5.1.2, that expressivist strategy might not succeed answering the instrumentalist challenge. Rostbøll also shares this worry that the variant might not be able to provide direct justification for democracy with non-instrumental credentials. Expressivist approaches assume that citizens have some independently defined interest, such as equal well-being in Christiano’s case, with democracy being considered a means to fulfill this interest. Bluntly put, democracy is considered the provider of a

¹⁴⁷ Rostbøll maintains that Valentini’s and Griffin’s approaches would also count as of this type.

¹⁴⁸ Christiano (2008, 4) defends the “public realization of the equal advancement of the well-being of the citizens”.

certain benefit. Yet this justification seems to lose the connection to the constitutive dimension that is present in the autonomous life account. If the value of egalitarian relations can be explained independently of democratic procedures, the account cannot provide a constitutive justification of democracy. As Rostbøll appropriately worries, these expressivist justice-first theories “do not provide a truly constitutive justification of democracy, which is characterized by the idea that the value of democracy is non-reducible, that is, that the latter cannot be based on some value the meaning of which is given independently of democracy”. Along with that we miss something truly essential: “the idea that democracy creates something new and unique, which we can understand only with reference to democratic institutions and practices” (Rostbøll forthcoming). I agree with Rostbøll here. The problem is not just that regarding democracy as a mere expression of a norm that is defined independently of democratic procedures ceases to answer the instrumentalist challenge; it goes deeper. As Rostbøll (forthcoming) states:

The reason why democracy cannot be understood and justified with reference to a norm specified in a prior theory of justice is that this approach fails to take fully into account the political-institutional character of the relationships created by constitutional democracy and the unique nature and non-instrumental value of these.

Thus, it seems that this justification strategy is either prone to the epistemic or the instrumental challenge. If democratic procedures are not themselves a part of the justification, then the justification is prone to the epistemic challenge, the modified leveling down, since it will face difficulties in explaining why democratic procedures would be better than any other decision-making procedure that treated citizens equally. If, on the other hand, democratic procedures were taken as a part of the justification – for example, by claiming that only democratic procedures can express a certain kind of equality or treat citizens in the right way – then a specific kind of equality, or a theory explaining the “right way”, would be required. However, this would be prone to instrumentalist challenge. The third alternative for the expressivist would be to argue for a notion of equality designed for democratic procedures, in which equality cannot be detached from these procedures (which could be the direction towards which Christiano is aiming, based on a recent paper in 2015). Nonetheless, the third alternative would require a constitutive structure in order to avoid the instrumental charges, which would convert it to the third intrinsic variant, which is the next to be discussed.

In relation to this, I should add that Christiano’s approach is a complex one. In a recent paper (2015) he argues that his approach is not an indirectly

instrumentalist one as has been claimed.¹⁴⁹ He argues (ibid., 240) that democracy’s “intrinsic value consists in its affording equality in the means by which people pursue their aims”, arguing that this is so because of what he calls *the public standpoint*. Christiano (2015, 244) explains the public standpoint as “the standpoint of the group of persons who are involved in the effort to establish justice and pursue the common good among themselves. It is not the standpoint of any particular citizen or that of a perfectly rational being.” The public standpoint brings certain impartiality along with it, yet he adds that it is “a standpoint that is limited by imperfect rationality in the creation of beliefs. Human beings, in their individual and their collective efforts, always fail to achieve perfect rationality” (ibid., 245). He seems to approach the more relational understanding of intrinsic worth when he maintains that “the standpoint gives us improved view of our relations with others” (ibid., 257). However, even here his defense of the intrinsic side builds on the expressive argument when he adds that “when we take the public standpoint, the adoption of the public standpoint itself acquires intrinsic value because of its inherently expressive value” (ibid., 258). Yet he claims that “the adoption of the public standpoint is itself intrinsically valuable because it gives us a mutually recognizable way of expressing our equal status” (ibid.). Thus, it seems that he considers the expressivist element the main basis for intrinsic worth after all.¹⁵⁰ With that emphasis, it seems that the reply to the instrumentalist is still a pressing one.

5.4.3 CONSTITUTING RELATIONAL EQUALITY

What we get from the two accounts discussed above is the realization that in order to reply to both instrumental and epistemic challenges, the intrinsic justification of democratic procedures should consist of a notion of *constitutive value* with an undetachable norm of *egalitarian relations* as its core. This would enable the avoidance of a sectarian notion of the good life and the idea that democracy’s value could be reduced to some norm independent of democratic procedures. In the following I take inspiration from the work of Ceva (2016), Kolodny (2014a, 2014b) and especially Rostbøll (forthcoming).

The main point is that understanding democracy as a good in itself and not as a mere instrument for a certain end requires acknowledging that democratic procedures create something good, *something that cannot be conceived independently of the procedures*. As Ceva (2016, 84) emphasizes, the main

¹⁴⁹ He refers to Amanda Greene and Howard Nye for presenting this accusation (probably in a discursive setting).

¹⁵⁰ Since the focus of this thesis is on substantial matters, not on the personal scholarship of specific authors, therefore for the purposes of this thesis I will take the liberty to proceed with the assumption that Christiano’s approach is of the expressivist type even if there might be a room for debate on this.

element of the intrinsic worth of procedures is that “relevant normative commitments ... are *realized* in procedures and not primarily expressed or promoted through them”. Democratic procedures are special in this sense;¹⁵¹ typically, procedures are just means to an end.¹⁵² The egalitarian relationships constituted in democratic procedures are also special – their meaning and value can be fully comprehended only along with the idea of democratic procedures themselves (Rostbøll forthcoming).

But what are these egalitarian relations? In the following, I first present Rostbøll’s understanding of them, and then I make a few remarks of my own. Rostbøll (forthcoming) formulates the core of his non-instrumental justification in the following way: “The justification of X is non-instrumental, if X is justified by a norm N, which itself can be fully conceived only with reference to X.” What to read into Rostbøll’s formulation? This justification is constitutive – meaning that X constitutes norm N, and yet norm N justifies X.¹⁵³ The justification is not circular, however, as some might suspect; rather, it describes a non-instrumental relationship. Were the justification of X by norm N to be independent of X, then it would be an instrumental justification, since X would merely be a means to N. The constitutive justification is something that Estlund seems to miss as a third logical possibility in his critique of non-epistemic deliberative views. The constitutive justification structure employs substantial standards that are not procedure-independent.

Before going into the details, let us examine how this constitutive egalitarian justification structure differs from the autonomous life and expressivist versions. In comparison with the autonomous life view what is here constituted by democracy is a norm of how individuals ought to relate each other, whereas in the Andersonian view the constituent of democracy is understood with reference to a certain benefit for individuals: a form of the good life. Secondly, in the autonomy version it is the political activity, citizens exercising their higher capacities by participating in politics, which constitutes the value, whereas for Rostbøll (forthcoming) “what constitutes the norm are public, binding, and entrenched democratic rights that create the right relationship between citizens and government”. There is also a difference in how this constitutive relation is seen to have a prescriptive role. For the autonomous life version, democracy’s justification is related to an ideal of how citizens ought to live, namely, that citizens should ideally exercise their capacities as fully as possible. The egalitarian constitutive justification, on the

¹⁵¹ I can imagine that special kinds of artistic procedures or creative ceremonies could potentially also have intrinsic worth, but typically procedures are valuable only instrumentally.

¹⁵² There are other similar kinds of human interaction procedures, such as certain creative procedural forms of art etc., in which the procedural human interaction is valuable in itself.

¹⁵³ Rostbøll (forthcoming) considers his justification strategy Kantian inspired. Kant describes in *Rechtslehre* the concept of freedom as independence that can only be fully conceived in relation to an idea of public legal order, since realizing it requires the public and reciprocal coercion of the constitutional state.

other hand, does not consider “democracy as constituting some particularly valuable or enjoyable form of life for citizens, but, rather, as constituting a particular and obligatory relationship” (Rostbøll forthcoming).

In contrast to the expressivist justification, according to the egalitarian constitutive justification the way in which citizens relate to each other is not known to be right or good on the basis of some independently conceived theory of justice. Instead, the relationship that is constituted cannot be conceived in the absence of democracy. “The norm that justifies democracy is partly created by the democratic organization of the political community”, as Rostbøll (forthcoming) explains. Rostbøll understands constitutive justification as strictly non-instrumental and denies that democratic institutions “should be justified with reference to the promotion of any kind of value for our individual lives, including the value of the free exercise of choice”. The promotion of certain independent values would make the relationship instrumental, whereas preferring certain types of lives would be sectarian.¹⁵⁴ He asserts that even “[t]he idea that we should regard autonomous lives as better lives, moreover, is untenably sectarian” (Rostbøll forthcoming).

Thus, democracy should be understood as a way of constituting society. The core of constitutive understanding is “the principle of respect for autonomy, which is not an idea that relies on advancement of interests or wellbeing, as does Christiano, since it is about relations among persons, rather than a matter of maximizing some end external to these relations” (Rostbøll 2015, 270). Democratic institutions should respect autonomy, but not promote it. The principle of autonomy regulates social relations. Therefore, the principle “does not rely on a conception of the good about which there is reasonable disagreement, but rather on an idea of a non-instrumentally right way of persons relating to each other” (ibid.). This is one relevant point to which to attend. The motivation behind the conception of autonomy’s regulating social relations is not contingent disagreement over the good or the just, but the idea that each citizen has the right to form and follow his or her own conception of the good, and political institutions should relate persons who have their own purposes. “Autonomy, then, is not understood as a particular relation the person has to herself, but as an interpersonal notion of not being subordinate to other person’s arbitrary choices” (Rostbøll 2015, 270).

What are these interpersonal egalitarian relations created by democracy? What are these normative ways citizens should relate to each other? They cannot be grounded in any particular idea of welfare as then they would be instrumental (cf. Christiano’s equality of well-being). Rostbøll (forthcoming) suggests that democracy is justified as it constitutes a certain kind of relational standing: “democracy is justified by the standing that it affords citizens, and standing is not a good that can be maximized. Standing is a relational norm and

¹⁵⁴ As mentioned in the introduction, democratic theories aim at non-sectarianism, which refers to an idea that in the contemporary societies the justification of democratic procedures should be open to different conceptions of good, and not dependent on potentially controversial value-commitments.

not an individual good; it is something you have in relation to others not something you can enjoy on your own.” This is the standing of an equal. But here one should emphasize that not just any conception of equal standing is enough. It should be democratic equality that consists of more than mere formal equality; rather, it should incorporate “the idea of equal standing as co-rulers or participants in common law-making. ... Without democratic equality, some members would be subordinate to the will of others in making law” (Rostbøll forthcoming). I am with Rostbøll here. Democratic equality requires the absence of social inferiority and superiority.

Rostbøll (2015, 274) further argues that, “[t]he moral importance of democracy is explained by the ideal of relating a plurality of persons to each other in a political society in a way in which no one is in a position to dominate others and in which citizens interact as autonomous beings”. As is hinted in his choice of wording, Rostbøll likes to discuss the egalitarian dimension under the rubric of freedom, understanding political freedom as participation in collective self-legislation. He sees (2015, 267) that “without the norms of freedom and autonomy the equality argument is incomplete”. He employs a Kantian-neo-Republican idea of freedom in relation to democracy, and argues (2015, 274) that only constitutional democracy can achieve what he assesses as the most fundamental element, namely, “respect for autonomy and the status of being a free and equal participant in processes of collective self-legislation”. He maintains that political freedom is important because of the relational standing of the individual and her co-citizens. “The freedom argument for democracy is that political institutions should secure respect not only for the private deliberations of individuals each pursuing their own ends, but also for the public deliberations of citizens judging the legal order itself” (Rostbøll 2015, 274).

It seems that Rostbøll effectively manages to characterize what is relevant for the constitutive egalitarian justification of democracy. It is both relational and non-instrumental and this seems to me the right way to go for an intrinsic proceduralist. Yet I am not sure whether the freedom element should be highlighted as he does. On the one hand, it is relevant that citizens are free, I agree, but then, on the other, I am not sure whether we should discuss these themes under the rubric of freedom. I might prefer not to do so. Depending on interpretation, the difference between Rostbøll’s Kantian-Republican freedom and social equality can be virtually non-existent. For example, Kolodny (2014b, forthcoming) defines social equality as avoiding relations of social superiority and inferiority. In fact, this definition approaches the very same elements as discussed by Rostbøll (forthcoming) under rubric of freedom.

Rostbøll, however, refers to neo-republican freedom as non-domination. For example, Pettit (1997, 2012), to whom Rostbøll directly refers, defines freedom as non-domination, as the absence of structural dependence on arbitrary power to interfere. But Kolodny has presented an argument against this very same interpretation that focuses on freedom as non-domination, on which Rostbøll builds. Kolodny argues that the claim that democracy could

protect people from domination turns out, on more detailed examination, to be too ambitious. The structural dependence on arbitrary power to interfere is something that democracy cannot protect one from. Kolodny argues that Kantian-Republicans should actually defend a less ambitious interpretation of the non-domination thesis; that they should strive for the absence of *social inferiority* instead of domination. Where domination is “a matter of exposure to another will, which need not be that of a superior, but may be of an equal, inferior, or none of the above” (Pettit 1997, 52), social inferiority is “a matter of inferiority to another individual” (Kolodny forthcoming). Furthermore, where “domination is a matter of exposure to another will, which need not be the will of an individual, but may be the will of a collective” (Pettit 1997, 52) social inferiority is “a matter of inferiority to another individual” (Kolodny forthcoming). Kolodny also notes that Pettit’s own descriptions of non-domination – “the idea that citizens could enjoy this equal standing in a society” (Pettit 2012, 2) – often tend to describe social equality, instead of the more demanding “freedom as non-domination”. Kolodny maintains that instead of arbitrary domination, what is objectionable is actually “being under the power of a superior person, and that is rooted in a wider concern for social equality” (Kolodny forthcoming). Nonetheless, I will not analyze these similarities or differences at more length here. I just wish to note that it seems that these themes can be discussed either under the rubric of a relational positive interpretation of equality or certain relational interpretations of freedom that approach equality.

Whereas Rostbøll’s constitutive egalitarian justification highlights the role of freedom, Ceva (to whose concept of interactive justice I refer in the next chapter) emphasizes rights and human dignity¹⁵⁵ as foundations for hers (cf. Christiano; see for example 4.2 of this thesis). She maintains that the basic tenet of human dignity demands that everyone should be recognized “in their capacity as sources of potentially valid claims.” (Ceva 2016, Ch. 1, 17, 93.) However, instead of Rostbøll’s freedom or Ceva’s rights, duties, and dignity I prefer here, for the purposes of the thesis, to concentrate on relative equality from the perspective of democratic procedures without taking a stance on fundamental normative commitments.

It is even more complicated to identify where my views differ from Ceva’s (2016). Most of her views match my own intuitions, and I lean heavily on her approach and concepts, especially in Chapter Six. Young’s and Anderson’s relational approach to justice has strong influence on her formulations of the paradigm shift from redistributive framework to recognizing relational

¹⁵⁵ One way to discuss these egalitarian relations is under the rubric of *dignity*. Treating people with the due dignity is a matter of democratic justice. Ceva argues (2016, 77) that human dignity demands that “people interact in a way that gives them due consideration in their capacity of potential makers of valid claims. As long as people possess such agential capacities, they ought to be reckoned with – their claims ought to be given due consideration by others and by institutions.” (Ceva 2016, 77–79; see also Waldron 2012b and footnote 102.)

structures (see Ceva 2016, 32 fn 6). While, as Ceva also notes, many relational approaches, such as Young's, present oppressive social relations as unjust by virtue of their negative impact, so do the terms of instrumental proceduralism (see also Estlund 2002).¹⁵⁶ But, as Ceva writes (2016, 96), even if Young fails to recognize the procedural aspects explicitly, they might be implicit in some of her views concerning domination and oppressive social relations.

In addition to Youngian ideas, Ceva (2016, 95-97) also refers to Anderson's critique of luck egalitarianism (1999) in which she claims that it does not refer to the kind of equality relevant for democratic equality. In Anderson's interpretation, luck egalitarianism refers to mere distribution of goods. "Social relationships are largely seen as instrumental to generating such patterns of distribution" (Anderson 1999, 313; see also Ceva 2016, 96). However, as I see it, Anderson's interpretation of luck egalitarianism seems rather narrow, even too narrow (see, for example, Lippert-Rasmussen 2015 for a critique; see also Fraser 2003; Toppinen 2005 for broader understanding of distribution). In contrast, I would prefer a more pluralist take on relative equality involving not only the dimensions of respect and recognition, but also that involving the distribution of cognitive conditions for the exercise of citizenship, and opportunities for influencing decision making, such as suggested by Christiano (2008, 197; see also Chapter 4.4.2 in this thesis.) In this thesis I do not go in detail into the definition of relative equality although that would be an interesting topic for further study.

Kolodny (2014b, 287) also argues that the justification of democracy rests "on the fact that democracy is a particularly important constituent of a society in which people are related to one another as social equals, as opposed to social inferiors or superiors". In his view, relations of social equality are actually constituted by equal opportunity to influence; at a more general level, what matters for relations of social inferiority and superiority is "equality of opportunity for power, authority, and consideration, where equality of opportunity is understood not as equal ex ante chances, but instead as *ongoing freedom (both formal and informal) to exit relations of inequality*" (2014b, 315). The emphasis should not be on the exercise of opportunity, but on the opportunity as such (Kolodny 2014b, 304).

Ultimately, one does not necessarily have to take a stance on this issue. It seems to me that for the purposes of this thesis, relational equality could be defended in rather minimal terms in relation to normative commitments (I

¹⁵⁶ Young's own justification of democratic procedures is somewhat epistemic. She defends her politics of difference on an epistemic basis because it leads to better consequences. See, for example, Young 1997, and also footnote 39 of this thesis. Nonetheless Young has also defended an idea that justice is relevant in considering the institutional relations individuals have with each other, not just distribution: how one's "doings and havings are structured by institutionalized relation that constitute [one's] positions" (Young 1990, 25; see also Ceva & Ottonelli 2012). Young understands these institutionalized relations, in other words rights, as "social relationships that enable or constrain action" (1990, 25).

return to this theme in the next chapter). What is relevant, however, is that *democratic procedures can be justified intrinsically as constituting egalitarian relations*. This relational egalitarian justification can avoid both instrumental and epistemic challenges, and be non-sectarian. It is interesting that in her classic paper, “What is the point of Equality?” (1999), Anderson also argues that the fundamental *egalitarian aim* is to eliminate oppression and create egalitarian social relations. Describing “the distinctively political aims of egalitarianism” she writes (1999, 288–289):

The proper negative aim of egalitarian justice is not to eliminate the impact of brute luck from human affairs, but to end oppression, which by definition is socially imposed. Its proper positive aim is not to ensure that everyone gets what they morally deserve, but to create a community in which people stand in relations of equality to others.

5.5 INTRINSIC DELIBERATIVE PROCEDURALISM AND THE QUESTION OF STABILITY

As already discussed, Estlund (2008, 6, Ch. IV) presents a pressing challenge for the procedural justifications of democracy in the form of a modified leveling-down argument, that is, a comparison to a coin flip. He argues that mere procedural fairness – full anonymity – is not sufficient to justify democracy, and therefore democratic proceduralism must include substantial, procedure-independent elements. As seen, however, democratic procedures can be justified by egalitarian relations, which are created and made conceivable by democracy itself. They are not independent of democratic procedures in the sense Estlund describes. Thus, an intrinsic proceduralist can maintain that democratic procedures involve something that is substantial, yet not procedure-independent: something thicker than mere, thin fairness as anonymity. Additionally, as mentioned, Estlund has argued that even hybrids of epistemic and procedural considerations should rest on procedure-independent elements. He argues that putting too much weight on procedural equality would lead to difficulties, as it would make the approach *unstable*. This is an objection to consider. The tricky part is the connection between procedural and substantial elements – how the elements are knit together and how the knitting is justified. Epistemic proceduralists use epistemic criteria, as all the choices are made on epistemic basis, whereas, if no epistemic criterion is used, Estlund claims that there are no stable justifiable criteria (2008, 93–97).

Interestingly, Cohen has argued in his paper, “Pluralism and Proceduralism” (1994), against the distinction between proceduralism and substance. As already discussed in Chapter 2.4., Cohen asserts that outcome justice and procedural justice are joined together. Cohen maintains (1994, 593–594) that “it is not a fundamental distinction in political justification” and

continues that “[p]rocedural and substantive concerns stand on a common footing in democratic theory”. He has a point here. Doubtlessly disagreement affects not just decisions concerning the outcomes but also decisions concerning the procedures. Yet, as Ceva points out (2016, Ch. 3), these elements are distinct social and political entities (as discussed in 2.4 of this thesis). The questions concerning them are, in fact, two separate sets of questions. There are different normative considerations concerning 1) procedural justice, such as how procedural cooperation should be structured in order to be structurally just; and 2) outcome justice, such as how costs and benefits of procedural cooperation should be distributed. Yet Cohen gives no reason why these should be considered interdependent on each other.

Ceva’s point that these are two separate sets of questions seems to provide an insight that is also relevant to Estlund’s worry concerning instability. Procedural and instrumental values form two separate sets, as do many other norms and values concerning living together in a society. Sometimes different norms contradict but, as Ceva points out, these two distinct elements can be considered as separate. Estlund argues that there are no stable criteria between procedural and outcome features if outcome features are not considered a supreme value; thus, a view combining both these sets of values would be unstable. Yet this does not seem to me a valid argument against valuing the intrinsic worth of procedures and not subordinating the intrinsic worth below outcome value. At least for a (non-monist) value pluralist, the lack of supreme value does not seem problematic as such. And as Rostbøll (forthcoming) puts it, “the point of democratic non-instrumentalism is to show that democracy is also good in itself and that this is an essential part of a justification of democracy”. It is a separate question then, whether these normative considerations in relation to procedures and outcomes suggest different ways of acting in particular circumstances. I touch on this question lightly in the following, Coda chapter of the thesis, although the main concern is a summary of the points made in this work and a brief discussion of minimal intrinsic proceduralism in relation to the limits of democratic inclusion.

6 CODA: MINIMAL INTRINSIC PROCEDURALISM AND DELIBERATION AS INTERACTIVE JUSTICE

6.1 SUMMARY

In this last, coda chapter I first briefly summarize the main points of the previous chapters. I then provide a sketch of what minimal intrinsic proceduralism could mean in the deliberative context. This thesis has discussed the role of equality in democratic deliberation procedures and the variation of procedural and substantial aspects in the justification of those procedures. Thus, an important question concerns the role egalitarian elements play in the justification of democratic procedures. Chapters Two–Four discussed three deliberative approaches to these themes, and Chapters Four–Six further discuss intrinsic proceduralism.

In Chapter Two I examined Cohen’s mainstream deliberative approach in which ideal deliberative reasoning as a core of the deliberative process has a sort of four-dimensional character. It functions as an ideal but also as something which actual democratic practices should mirror. Cohen’s ideal connects procedural and substantial elements into a single framework in which the legitimacy of democratic decisions depends on both procedural values and on the substantive quality of the outcomes that the ideal deliberative decision-making procedures generate. It is strongly democratic since the people’s participation in the justificatory processes of deliberative democracy is required for political legitimacy. The deliberative procedures are justified on the basis of hypothetical consent given under the imaginary conditions of the ideal deliberative process. Yet, as I argue, the ideal remains at a distance from actual conditions, therefore its justificatory force suffers. The problem lies with the demand for consensus on substantive reasons in circumstances of pluralism and disagreement; yet consensus is the basis of Cohen’s hypothetical justification. Besides, given the temporality of political decision making and the path-independency of deliberation, it seems that this interpretation of deliberative democracy faces difficulties in justifying the role of deliberation in actual political decision making, because it is not clear why actual decision-making procedure should aim to mirror an ideal. The ideal deliberative situation cannot be realized in democratic societies. The question then becomes what would be the second-best alternative. Cohen maintains that isomorphism between the ideal and actual would make actual deliberation as the second-best alternative even without ideal conditions (see, for example, Cohen 2009b, 339). There are no guarantees, however, that trying to approximate the ideal situation via redressing measures would bring better outcomes than some other solution. Furthermore, the alternative solution of combining deliberation with voting is less solid than it appears. The

problem is that the absence of consensus in the deliberative case also means the absence of consent, while “consent” reached via achieving consensus is the basis of legitimacy of the (justificatory) deliberative ideal. Therefore, justificatory deliberative theory should be able to connect the voting rule and the epistemic virtues of deliberation, to make the connection between the epistemic benefits of both. On the other hand, combining voting with deliberation has one more difficulty related to the path-independence of the deliberation process. In the absence of consensus as a reference point, one cannot evaluate the phase of the deliberation process. Consequently, it is not necessarily an epistemic improvement to first deliberate “for some period” and then vote. The combination of both substantive and procedural perspectives that Cohen defends is relevant for plural democracies, yet the way they are joined together in the justificatory approach suffers certain shortcomings, as discussed above. Meanwhile, the epistemic aspect of the view does not seem to carry the justification over these difficulties. Simultaneously, as discussed, Cohen’s interpretation of the egalitarian character of democratic procedures seems inadequately developed to serve a justificatory purpose.

The third chapter focused on what may be the most influential procedural approach currently, that is, epistemic proceduralism. Of especial importance in this and the chapters that followed is the question of what kind of substantial commitments a democratic procedure should involve. Estlund argues for procedure-independent substantial standards, and claims that if there is a possibility to hold to certain epistemic, and not just procedural, standards, the epistemic should always have primacy over the procedural. The core of epistemic proceduralism is the qualified acceptability requirement (QAR) according to which political justifications must be acceptable to all qualified points of view. This idea reflects similar features as Cohen’s consensus ideal in the previous chapter. Yet, whereas Cohen seeks ideal consensus via actual deliberators, Estlund prefers a hypothetical setting. He explains (2008, 286 fn. 6) that he refers loosely to Cohen’s ideal but the theoretical role he gives to this imaginary situation of ideal deliberation is explicitly epistemic, whereas for Cohen the deliberative ideal is constitutive. Estlund considers the deliberative situation “an ideal epistemic situation” (2008, 18). He has criticized competing approaches for not being able to justify deliberation, but it is not entirely clear how democratic deliberation is justified in his own version either. In order to avoid the problem of second best, he suggests that ideal deliberation should be understood as a template for marking and measuring the deviations from the ideal and devising epistemically remedial responses. However, for me the role of deliberation seems unclear in this picture. What would be the reason for deliberating in a non-ideal way in the first place? What is the justification for actual deliberation, if ideal deliberation is used as a template and actual deliberation does not aspire to ideal circumstances?

Albeit Estlund is quite modest about democracy’s epistemic prospects, only aiming for better than randomness, there will always be a certain

indeterminacy in saying that epistemic proceduralism is better than random. Estlund describes his method as a provisional leap (2011, 357–358), in which the core idea is to offer a plausible and appealing theory, but I am so far not convinced that epistemic proceduralism appeals as a more plausible alternative to intrinsic proceduralism. Estlund relies more on laying the burden of proof on others and on the appeal of his approach, than on offering solid proof himself. My aim in the chapter was to turn the balance in the opposite direction. It also seems that drawing the line between epistemic proceduralism and epistocracy is not such a simple task; it seems strange that outcome values would dominate procedural equality lexically in the context of democratic procedures to such an extent. Estlund seems to assume that his qualified acceptability requirement could replace procedural justice, and do it in epistemic terms. Yet it seems to me that epistemic proceduralism might in the end have difficulties defending democracy. If a justification of democratic procedures does not refer to the intrinsic value of democratic procedures, but mere consequences, it is an instrumental one in a broad sense (see Arneson 2003, 2009). Therefore, I presented a caricaturized science fiction example, “Super Episteme”, in order to highlight the undemocratic tendencies of epistemic proceduralism. I also emphasized that if (and only if) the qualified acceptability criteria (or reasonability) were to play the main role in democratic theory, then there should be equal opportunities to be qualified (or to attain reasonability) in order to avoid the approach turning from democracy into meritocracy.

In the fourth chapter I described Christiano’s hybrid view, one that rests on values that are at the same time substantial yet not independent of procedure in a broad sense. Procedures are not defended on epistemic grounds because of the promotion of substantially just outcomes, but instead because they are seen as intrinsically just. However, this intrinsic value is conditional. For Christiano democratic procedures can have intrinsic value if they realize public equality. He takes diversity, disagreement, fallibility, and cognitive bias as starting points. His argument proceeds from pervasive disagreement to the request for equality of wellbeing. Since we face pervasive disagreements about justice, the common good, and the value of substantive laws and policies, therefore democratic decision making should publicly treat each citizen as an equal. He argues that if we recognize these challenges of plural societies, the only way to ensure that people are treated equally is to give each an equal say in shaping a common world characterized by deep interdependence of interests among citizens.

I also introduced Christiano’s wide conception of deliberative democracy, which is perhaps the most noticeable difference between Christiano’s view and justificatory proceduralism. It requires that equality of all citizens in public deliberation is institutionally supported and reinforced by other necessary background conditions in society. Furthermore, in a well-functioning democracy, citizens are committed to the process, open to the arguments of others, and ready to shape or even change their preferences if needed in the

course of deliberation. However, the wide conception rejects the tenet that deliberators should only appeal to reasons that can be accepted by all other reasonable deliberators; instead they should appeal to the most compelling reasons from their own perspective. There are three distributional dimensions to the procedures: cognitive conditions for the effective exercise of citizenship, opportunities for influencing the agenda for collective decision making, and equality of respect for each other. These are the dimensions according to which the process of public deliberation should be assessed. On the intrinsic side, Christiano's wide understanding of the deliberative process embodies three fundamental values: the ideal of equal respect, the commitment to advance justice and the common good in society, and the process of deliberation as public realization of equality. The inclusivity of the wide view makes it in some respects more realistic, even if in others, of course, idealistic as well. Nevertheless, while this wide conception of deliberation is quite like the version I defend later in this Coda chapter, there are some controversial elements in Christiano's approach. One is that he argues for equality of wellbeing. This definition seems controversial, however, and I suppose the intrinsic proceduralist could take a more minimalist stance towards the interpretation of equality.

It seems that none of the three deliberative approaches discussed in the first part of the thesis offers a fully satisfying justification for democratic procedures. Christiano's version comes closest. Its strengths are its prominent egalitarian character, wide understanding of deliberation, and also the feature that the ideal is built with unideal circumstances, as well as the ideal level, in mind. This approach is tailored to take into account the fact that people disagree. Consequently, Christiano's procedural account is also more robust towards unideal circumstances than that of Cohen or Estlund. In my view, a further strength is that it is in line with the idea that there is a difference between epistemic and egalitarian dynamics in relation to the motivation behind deliberation. Nonetheless, it seems that one weakness of Christiano's account is a too detailed notion of equality. The equality of wellbeing that Christiano defends seems too controversial a commitment to be used as the currency of equality. In addition, it seems prone to the instrumentalist critique discussed in Chapter Five, because Christiano's account does not employ a constitutive justification of democracy; instead, procedures are defended on more expressive grounds.

In the fifth chapter I examine Arneson's instrumentalist challenge and defend the possibility of a plausible and appealing version of intrinsic proceduralism. Drawing on the work of Ceva, I discuss a few alternative strategies for trying to defend intrinsic proceduralism, but none of them seem to work alone; thus, it seems that in order to defend the intrinsic value of democratic procedures that cannot ultimately be interpreted via instrumental value, the value of democratic procedures should be understood in a constitutive manner. I then follow Rostbøll's line of argument and discuss some further alternative approaches that employ constitutive or egalitarian

relations as their core. It seems to me that if democracy is understood as constituting egalitarian relations, such an understanding will enable the intrinsic proceduralist to answer both the epistemic and the instrumental challenge. On the one hand, the constituting relation cannot involve strongly sectarian elements; on the other, if the value of egalitarian relations can be explained independently of democratic procedures, the account cannot provide a constitutive justification of democracy. Promotion of procedure-independent values would make the relation instrumental. Therefore, intrinsic justification of democratic procedures should consist of both a notion of constitutive value and an undetachable norm of egalitarian relations as its core. These relations cannot be constituted independently of democracy as they require the absence of social inferiority and superiority; in other words, equality of democratic opportunities. As Kolodny argues, only democracy can offer the kind of equal opportunity to influence decision making that avoids subordinating some to the decisions of others. Democratic procedures constitute valuable egalitarian relations that cannot be conceived independently of the procedures. The minimalist intrinsic proceduralism I end up defending combines ideas from Christiano, Ceva, Rostbøll, and Kolodny. Yet it seems to me that the egalitarian relationship should be kept as minimal as possible, in order to avoid theoretically sectarian commitments; and also pluralist, in order to reach all the relevant dimensions of relative democratic equality.

6.2 MINIMAL INTRINSIC PROCEDURALISM

There are different ways to interpret intrinsic proceduralism, as noted at the end of Chapter Five. I prefer a minimalist version in the justificatory sense. What does *minimalism* here denote? The focus is on democratic procedures. For intrinsic proceduralism, it is relevant that the substantial commitments that are required for the justification are not procedure-independent. Still, there seems to be a certain core to which even a minimalist should commit.

Cohen (2004) makes a distinction between *substantive* and *justificatory minimalism*. (Note that the label “justificatory” refers here to minimalism, not deliberation as in Chapter Two.) The substantive version is minimal with regard to the content of normative principles, seeking minimal prescriptivity, whereas the justificatory version is minimalistic in terms of theoretical independence, seeking a wide acceptability of the prescriptions for people holding a variety of different value commitments (Cohen 2004; see also Ceva 2016, 84–86).¹⁵⁷ It seems to me that democratic proceduralism should take

¹⁵⁷ Cohen explains this via human rights (2004, 192). Substantive minimalism endorses the idea of minimal prescriptivity: “The central idea of substantive minimalism is that human rights are confined to protections of negative liberty.” Justificatory minimalism, however, is not afraid of prescriptivity, but wary about too many sectarian commitments: “Justificatory minimalism is animated by an

the route of justificatory minimalism and aim for normative principles that are independent of particular ethical outlooks, conceptions of good, and other value commitments. Nonetheless, one should note that the standpoint is not anti-foundationalist, relativist, or sceptic concerning the possibility of objectivity. The aim is just to avoid unnecessary commitments. One reason for this preference is that, as mentioned in the introduction, the approach defended in this thesis is partial. The aim here is not to offer a systematic enquiry of how democratic decision making is related to other domains of a just society, or even of how the intrinsic worth of democratic procedures compares in relation to other procedural values. This is an additional reason why it is relevant to keep the justification of intrinsic proceduralism minimal and as non-sectarian as possible in order to enable wider applicability.

For justificatory minimalism, the normative principles should be independent of particular conceptions of good and other value commitments. For example, the equality of wellbeing defended by Christiano (2008) seems controversial. Nevertheless, it seems that the substantial value of relational equality employed here in a procedural context is quite minimal in relation to normative commitments, albeit demanding in terms of equality.

This type of defense of minimalism of relative equality is defended in a more general setting by Arneson who analyses relational equality in his review piece on different types of equality (2013). He maintains that a commitment to relational equality does not, as such, necessitate committing to a specific more detailed approach concerning the type of equality. He explains (2013) that one can both “(1) affirm relational equality and hold that in a just society people should relate as free and equal” and simultaneously also “(2) affirm luck egalitarianism and hold that people should be equal in their condition ... except that people's being less well off than others is acceptable if the worse off could have avoided this fate by reasonable voluntary choice”. It is possible to defend both these ideals simultaneously, even if they obviously sometimes conflict. He furthermore emphasizes that commitment to relational equality does not in itself require commitment to any particular normative approach. The relational equality ideal can be consequentialist, or deontological for example. “That people should relate as free and equal might be taken to be a goal to be promoted or an entitlement to be respected” (Arneson 2013; see also Lippert-Rasmussen 2015 for pluralist understanding of relational equality).

It moreover seems plausible that the amount of intrinsic value can vary and, along with it, justificatory strength. Christiano (2015, 239), for example, describes a conception of minimally egalitarian democracy that is characterized by “equal voting power, equal opportunities to run for office and form political associations, and where the voting of citizens determines who is

acknowledgement of pluralism and embrace of toleration. It aspires to present a conception of human rights without itself connecting that conception to a particular ethical or religious outlook; it minimizes theoretical aspirations in the statement of the conception of human rights with the aim of presenting a conception that is capable of winning broader public allegiance.”

in power and how they rule”. It also requires a rule of law. This kind of minimally egalitarian society has some intrinsic value according to Christiano (2015, 239): “The idea is that a society that possesses [the] minimally egalitarian character has some intrinsic value and the more egalitarian the society becomes along the spectrum from the threshold to the ideal, the more intrinsic value it has.” Yet description of merely minimally egalitarian democracy sounds quite like the aggregative ideal mentioned briefly at the beginning of Chapter Two. Christiano (2008, 298) also notes that “the minimum outcome standard is not sufficient for the realization of public equality”. If justification of democratic procedures depends on their constituting egalitarian relation, the justificatory force of the merely minimally egalitarian democracy seems too weak to me to serve the purpose. The egalitarian relations should be more robust, in order to provide strong enough justification for democratic procedures.

6.3 PROCEDURALLY RE-EVALUATED DELIBERATION – DELIBERATION AS INTERACTIVE JUSTICE

Minimal intrinsic proceduralism gets a more comprehensive description when we return to democratic deliberation, and analyze deliberative procedures from that angle. How does intrinsic proceduralism affect our understanding of democratic deliberation? For these last pages of the thesis I return to the deliberative themes and consider how minimal intrinsic proceduralism could be interpreted in a deliberative setting. This elaboration will remain at a rather general level and more like a sketch than precise definition, but it will serve the purpose of exemplifying the point of intrinsic proceduralism for a deliberative approach.

The typical deliberative approaches, such as Cohen’s, and especially the epistemic variants, such as Estlund’s, focus on the prospective outcome justice of deliberative procedures. These ideals are outcome-oriented in their justification even if they are procedural. Therefore, the deliberative procedures are also designed with an eye to the outcomes: just decisions. Nonetheless, as I see it, in the light of intrinsic proceduralism it becomes obvious that a switch of focus is needed. Democratic deliberative interaction should also be considered independently of the outcomes. The two types of procedural justifications are distinct, and understandings of the relevant features also differ depending on the justification of the procedure. There is a difference between motivations: whether the procedures are to be considered morally valuable in themselves or merely for their outcomes (see also Chapter 4.4.2; Arpaly 2011). How should deliberative processes be understood if intrinsic procedural justice rather than outcome justice is the guiding idea? How could decision-makers be treated as relationally equal in the process? In the following I maintain that when democratic procedures are understood as intrinsically justified, the deliberative procedures are to be further adjusted.

My suggestion is that this adjustment be made from the perspective of *interactive justice*. This means that elements relevant for intrinsic justice, such as democratic inclusion, have more bearing, whereas elements such as the consensus requirement and reasonability, discussed in more critical tones earlier in this work, require reevaluation.¹⁵⁸

This sketch is composed of ideas related to democratic inclusion and the themes discussed in the previous chapters, but most of all I employ Ceva's recent ideas. In her *Interactive Justice: A Proceduralist Approach to Value Conflict in Politics* (2016), Ceva creates a synthesis of political philosophy and peace studies. She interprets theories focusing on conflict management through a normative, philosophical lens. She explains (2016, introduction) her inspiration to use theories of conflict management in order to gain insights that could be applied in order to understand procedural dimensions of justice in value conflicts. These conflict management theories, developed in practical conflictual contexts (on the basis of an empirical learning process), focus on the treatment of parties *during* their conflicts. In the field of political philosophy, questions concerning the procedural part of cooperation are often mainly assessed on an instrumental basis; only the outcomes are evaluated on a normative basis. As Ceva points out, this misbalance of the normative field is likely due to the (mis)belief that structure must be merely functional to the distribution. However, as she argues, proceduralists should combine these perspectives and ask: "On what terms should the conflicting parties interact such that they find their interaction inherently morally acceptable?"

The questions concerning just structures of co-operation open a window onto interactional justice. Ceva (2016, 71) defends "proceduralism as a theory advocating the importance of the procedures constitutive of interpersonal interactions in politics and society as a proper locus of interactive justice". Her view is inspired by Anderson's (1999) notion of relational equality and Young's

¹⁵⁸ What it comes to empirical applications of deliberative ideals, it is interesting to consider what kind of justification they build. For example, Saunders (2010, 12–13) points out (referring to James Fishkin, the eminent empirical deliberative expert) that a form of deliberative, citizen juries could fit with Estlund's idea of epistemic proceduralism and his qualified acceptability criteria. Instead of universal suffrage, only a smaller sample of citizens would be randomly given the right to participate. This would be justifiable on an epistemic basis, as large scale political participation would be costly and even infeasible. Yet no regional interest would be offended and there would be no demographic bias if the sample were a random cross-section of population and inclusion were decided on the basis of lottery. All the significant groups would be represented. (This method would also prevent the group becoming a separate faction of society, awarding themselves special privileges.) The arrangement would have epistemic value as well, as the smaller size of the group would enable deliberation. Therefore, it would fulfill the requirements of epistemic proceduralism. It is an interesting point to consider in reference to this type of application that it seems that the idea of citizen juries would fit with epistemic proceduralism, and thus also suffer from the complexities of the view in respect of justification. Intrinsic procedural justification would instead require reevaluating the deliberative practical settings from a procedural point of view.

idea of (1990, 25) “relations that constitute positions” and criticism of distributive justice (as mentioned in Chapter 5.4.3). Yet she emphasizes that her view differs from Anderson’s and Young’s in that, in her view, oppressive social relations are not unjust by mere virtue of their negative impact (which would count as instrumental proceduralism), but also because of procedural injustices. She suggests that the inherent purpose of procedures is to provide “a locus where justice-relevant normative commitments are realized”. Furthermore, engagement in procedures that give equal voice to conflicting participants “constitute an inherently just form of interaction between conflicting parties” (2016, 97).

In the following I suggest an account of the role of deliberation from the perspective of intrinsic proceduralism that considers the interactive procedural dimension of deliberation. Nonetheless, I accentuate that the inherent qualities of procedures are also controversial (see Chapter 5.4.3). It is not a retreat from substance, as Estlund alleges non-epistemically driven proceduralisms to be. Intrinsic procedures are substantial, although the substance is not procedure-independent. As there is wide disagreement over outcome justice, interactive justice is also a controversial theme, even if not systematically debated to such an extent. Therefore, my aim is to continue to maintain the minimal line here as well.¹⁵⁹

6.3.1 SHIFT OF FOCUS FROM CONSENSUS TO SHARED DISAGREEMENT

Interactive justice concerns the collaborative relations of participants during a process. As Ceva defines it, for a process to be interactively just, its conditions should be morally acceptable to all participants independently of the gains they obtain from it. What seems crucial for deliberative interaction from the perspective of interactive justice is that democratic procedures are such that all the parties are considered due sources of valid claims, that is, considered socially equal¹⁶⁰, and that the procedures also enable cooperative interaction (Ceva 2016, 16, Ch. 2). Ceva (*ibid.*, 18) argues that in order to realize interactive justice “what matters primarily is that the state’s institutions discharge their duty to establish a political and social system within which people are treated in an inherently morally acceptable manner in their capacity as potential makers of valid claims”. As discussed earlier (in Chapter 5.4.3), I prefer to emphasize the relative equality of interaction, including cognitive conditions and conditions of interaction that are constituted by equal opportunity (cf. Kolodny 2014b, 304, 315).

Intrinsically just procedures will doubtless be indeterminate with regard to the outcomes, as these procedures are considered in an open-ended manner

¹⁵⁹ This theme would be an interesting topic for a research project.

¹⁶⁰ I prefer a minimalist understanding here, but it seems that this is open to a wide variety of interpretations.

(cf. Bohman & Richardson 2009). Nevertheless, it seems to me that outcomes also have a valuable function for intrinsic justice. Outcomes can function as signs of interactive injustices. For example, in another context, Phillips (2004) has defended an idea that the equality of outcomes can serve as a check point for equalities of opportunity.¹⁶¹ Thus, outcomes that appear unequal – exhibiting, for example, structural inequalities or epistemic injustices (cf. Fricker 2007) – should be regarded as potential signals that procedures are not as equal as they appear, although this is not necessarily the case. But persistent outcome inequalities should be considered a request for further analysis (cf. also Christiano’s *minimum outcome standard* 2008, 288–299; Chapter 4.5 of this thesis).¹⁶²

The re-evaluated deliberative processes discussed here seem, moreover, to be in line with Christiano’s wide understanding of deliberation, discussed in Chapter Four. For the most part, Christiano’s deliberative view seems to fit with the idea of deliberative procedures interpreted as interactive justice. However, according to minimal intrinsic proceduralism, what is relevant in deliberation is interactive justice. As mentioned, the conditions of consensus and reasonability, examined in a critical light in Chapters Two and Three, seem to require re-evaluation from that point of view. In the deliberative setting the consensus ideal is related to outcomes and in Cohen’s approach simultaneously to the justification. However, it does not play such a role in procedural interaction and, as discussed in Chapter Two, it can even have negative effects on the interactive process. Democratic communication can be characterized more as a struggle than an agreement, especially in structurally unequal settings. Young (2000, 44) emphasizes that in situations of this type it is of greater importance to learn about the differences which cause the conflict than to aim at consensus. As Young points out, if the deliberation process does not aim at such understanding, it might be complicated to motivate citizens to participate in public processes.¹⁶³ But this as such does not seem to require consensus. It seems that, as Ceva suggests (2016, 146–148), the focus should be oriented towards understanding, but this understanding should not be interpreted in Habermasian terms as consensus but, rather, as understanding of the differences and sources of disagreement.¹⁶⁴

¹⁶¹ On equality of opportunity see Mason who argues that merely “possessing an opportunity” is not the same as “having an available option” (2006, 22) In contexts of equality of democratic opportunities I think that friction factors are also relevant (as discussed for example by economists), and also the soft constraints (see Lawford-Smith & Gilabert 2012).

¹⁶² Cf. also Christiano (2008, Ch. 7) who argues that existence of persistent minorities weakens democratic authority.

¹⁶³ However, one should note, as already mentioned in Chapter 5.4.3, that Young’s own justification of democratic procedures is somewhat epistemic.

¹⁶⁴ The point is by no means unique; it has also been argued by several other critics of deliberation. Jane Mansbridge (1999) maintains that deliberation should not aim for consensus but to clarify the sources of conflicts, even aggravating the conflict in order to make the different reasoning and central

One central element is the recognition of other citizens as equals, as potential makers of valid claims. As Ceva (2016, 145) explains, “the pursuit of this kind of understanding is essential for the parties to see that they all have moral stakes in the conflict and their conflict is in fact a ‘joint problem’”. The participants might not always understand each other’s respective positions, but they should accept that those positions are morally relevant in regard to the matter under dispute. This requires accepting that political disagreements are not always matters of misunderstanding (i.e., the misperfection view, in Mason’s vocabulary, discussed in Chapter 2.3.1); there might be genuine dissent as well. Ceva raises the principle of *Audi alteram partem*, that is, to “hear the other side”.¹⁶⁵ Even disagreeing citizens should overcome their reticence and distrust of engaging in a procedurally regulated adversarial exchange, one that is guided by principles of procedural equality. When the conflict dynamics become antagonistic, it means that the parties have failed to recognize each other as equals. As Ceva (2011, 164) highlights, what matters are “the reciprocal attitudes of the parties during the process itself as sustained by the procedural rules governing the interaction”.¹⁶⁶ Interactive justice in democratic procedures requires a joint, cooperative description that encompasses the perspectives of all the participants. In other words, *what is to be shared is not consensual understanding, but understanding of the disagreement as a shared problem that requires cooperative effort: recognizing each other as equals on the verge of disagreement.*^{167, 168, 169}

problems understandable to participants. Nevertheless, Mansbridge sees the deliberative process as a special one that enables this articulation of different viewpoints and disagreements (1999, 226–227; see also Bohman 1996). Ceva has a new take on the theme, however, as she also defends the possibility of intrinsic proceduralism.

¹⁶⁵ According to Stuart Hampshire (2000, 8–9) this principle was originally presented by Herbert Hart.

¹⁶⁶ There are different levels of disagreement between full conflict and a cooperative process. While beyond the scope of democratic interaction, it is definitely interesting more generally that Ceva’s insights cover an even broader scale of conflict. Ceva suggests applying the peace studies notion that the proper scope of a process should depend on the conflict. In the conflictual situation, if it is becoming violent, the first focus should be on a process of de-escalation, and then on setting the preconditions for motivating the parties to take part in a cooperative process of argumentation. The appropriate scope of focus then gradually shifts towards reaching an understanding, from antagonism towards egalitarian adversarial collaboration (Ceva 2016, Ch II & V especially 150–152).

¹⁶⁷ This approaches the views defended by agonists, at least Honig 1996 and Mouffe 2000.

¹⁶⁸ See also Christiano’s concept of a “common world”, discussed in Chapter Four.

¹⁶⁹ It is highly interesting, that in a recent empirical study (2017) Brinza & Grossmann have found some evidence that people who have lower social class backgrounds tend to be better at taking into account the perspectives of those that differ from their own in interpersonal conflicts than those who have grown up in privileged conditions. But it is far too early to make any further assumptions based on these findings.

Including such differences in the democratic dialogue is obviously not only relationally just, but also beneficial for the democratic process, both instrumentally and epistemically. (The latter is the essential idea of the whole deliberative approach.)¹⁷⁰ But nonetheless one should note that the outcome benefits are contingent. While public deliberation can improve rationality by diminishing shallow misunderstandings, discussion and debate are also likely to bring disagreements to the fore.¹⁷¹ A more egalitarian setting can also produce more numerous points of conflict, as those who in other settings may have stayed quiet and kept their differing views to themselves, may also express their opinions. As Christiano (2008, 196; also see Young 2000 *inter al.*) notes: “Differing points of view cannot be eliminated when there are participants with differing social and economic backgrounds and experiences in life and the evidence always falls short of proof.” What is relevant here is that the focus is not on the outcomes (as it is even for Young) but on the interactions as such, and on taking equal responsibility for shared disagreement. This is related to recognition of the epistemic equality of participants – the acceptance that disagreement is not necessarily caused by the mere error or irrationality of “others”.

6.3.2 REASONABILITY AND LIMITS OF INCLUSION

The request for reasonability employed by Cohen’s deliberative ideal (and Estlund’s epistemic version in the form of QAR) also requires re-evaluation from the perspective of interactive justice. The principle of reasonableness limits the scope and manner of public deliberation. Christiano has critically pointed out that Cohen’s deliberative ideal is based on the notion of reasonability as it requests a *narrow conception of public deliberation* (see, for example, Christiano 2008, Ch. 5). From the perspective of wide deliberation and interactive justice it is not clear why one would prefer the narrow notion, and thus refrain from proposing terms of association that are based on reasons which (one believes) are true but which are incompatible

¹⁷⁰ For a more empirical approach to the instrumental benefits of diversity in complex systems such as societies, see, for example, Scott E. Page (2010, 3) who makes a convincing case (2010, 2) that diversity is “of paramount importance for the continued flourishing of societies, economies and ecosystems”. Homogenous groups tend to see things in the same way, whereas diverse groups tend to see things from multiple directions and they do not get stuck in the same places. “Diversity can provide insurance, improve productivity, spur innovation, enhance robustness, produce collective knowledge, and ... sustain further diversity. But diversity, for all its benefits, is no panacea: It can contribute to collapse, conflict, and incomprehensive mangles.” As discussed earlier, the instrumental benefits are contingent, yet they are one reason to favor the inclusion of diverse perspectives and democratic equality.

¹⁷¹ Furthermore, I should mention here that Estlund also emphasizes that actual democratic politics requires sharp and disruptive action, even, momentarily, activity that interferes with communication, as he puts it – although, for him this is not relevant to his ideal, but only the actual politics (see also Estlund 2008, Ch X, especially 184–186).

with reasonable doctrines accepted by some members of society. This is especially true of plural societies in which people hold a wide variety of views on moral and political questions. Christiano (2008, 229–230 fn 54) even claims that “we have a reason to think that the principle of reasonableness is inegalitarian”. Views building on the narrow notion of reasonability do not value the inclusion of the unreasonable, even in those versions that do not directly require excluding them legally.¹⁷²

However, while the reasonability requirement seems too narrow as it stands, inclusivity cannot be unlimited. If the request for reasonability is given up, there needs to be some other limit for inclusion. Where should the line be drawn? Wider inclusiveness seems to complement the idea of interactive justice. Ceva provides a more detailed proposition for the scope of inclusivity that appears to draw the line at a more suitable place from the perspective of a minimal intrinsic proceduralist. She starts her description of the limits of inclusivity from the (Rawlsian) ideal of reasonability (cf. Cohen’s reasonability and consensus conditions and Estlund’s QAR). A typical (liberal) view of ideally reasonable persons conceives them as those who: 1) endorse the idea of persons as free and equal; 2) are committed to engage in cooperative interaction with others on mutually acceptable terms; and 3) are ready to offer others public reasons in defense of their political claims. Correspondingly, unreasonable persons are those who violate at least one of the conditions, if not more. Violators of the first (and, consequently, also the latter two) would be, for example, hardline extremists and those holding racist and sexist views. Full violators of the second would count as anarchists, whereas perfectionists could be counted as partial violators. The violators of the third condition would be those whose reasons are based on comprehensive doctrines or other grounds that are not shared. Typically (Rawlsian) liberal theorists, including Cohen and Estlund, require the justifications to be acceptable to the ideally reasonable. However, it seems that that this is too narrow a scope. Conflictual issues of interactive justice occur between people who vary in their degree of reasonableness and unreasonableness; in order to justify institutions and practices to all of them, the justification of procedures should extend beyond the ideally reasonable. On the other hand, how wide and inclusive should the process be? Inclusivity has to be limited in order to enable democracy. Ceva suggests a “moral acceptability test”. The first condition could not be violated, that is, democracy must require that participants endorse the idea of persons as free and equal. However, the “non-ideally reasonable” that violate condition three – such as religious groups that accept conditions one and two but make public use of non-public reasons; and those partially violating conditions two and three – such as liberal perfectionists refusing to engage in cooperative

¹⁷² Christiano doubts that even this non-exclusion can be seen as related to the difficulties of drawing a line that might exclude some potentially reasonable individuals among the unreasonable. Estlund’s views seem to support this interpretation; i.e., that the basis for non-exclusion is the difficulty in making the distinction, as Estlund admits (2008, Ch 3). See also Chapter 3.2.1 of this thesis.

interaction with their religious opponents who hold views that the perfectionists consider deeply morally corrupt – could pass the test (Ceva 2016, 119–120). She argues that egalitarian adversarial argumentation as constitutive of a form of cooperation should be morally acceptable to all the conflicting parties as, during such interaction, all the parties are given due consideration, and none is treated as inferior. She does admit that the binding force of the test does vary depending on the different degrees of reasonability and unreasonableness involved. By this she means that

[a]s long as the conflicting parties do not reject the idea of persons as free and equal beings (despite their different, and possibly incompatible, specific interpretations of this general idea), they have binding reasons to consider a procedurally egalitarian treatment as giving them due consideration. (Ceva 2016, 121–122)

This seems a suitable understanding of the limits of inclusion for the purposes of intrinsically justified, re-evaluated deliberation procedures.

6.3.3 PLURALITY OF PROCEDURAL VALUES

One of my basic assumptions is value pluralism. Intrinsic procedural value should be understood as complementing other types of value.¹⁷³ Thus, I do not wish to contest that democratic procedures and deliberation have instrumental worth. Quite the opposite; deliberation has immense factual and even innovative capacities. As Lawford-Smith and Gilabert (2012, 814) put it, deliberation has great creative potential: “a central role of political deliberation is to imagine ways in which current economic, institutional, and cultural configurations can be changed so that allegedly infeasible but highly desirable improvements are introduced”.¹⁷⁴ Yet the point here is that the instrumental value of democratic procedures is ontologically distinct from intrinsic procedural value. What matters for the purposes of this thesis is that democratic procedures may be intrinsically just, independently of their outcomes. Democratic procedures constitute something unique, something that does not exist without democracy and that we can fully comprehend only by referring to democracy – an egalitarian relationship that has value beyond the instrumental.

¹⁷³ Someone with more monist intuitions might, of course, like to join the dimensions together and define the elements in more detail. The idea of epistemic proceduralism could be combined with an idea of egalitarian proceduralism, for example. But in that case the equal opportunity to be reasonable should be among the aspects to develop.

¹⁷⁴ In addition, aggregative democratic processes also have significant instrumental value in the process of pooling facts and beliefs without or after deliberation. As Robert Goodin states (2003, 16) “democratically pooling the independent opinions of several agents can be a very powerful device indeed for resolving issues of sheer fact”.

In addition, even if the currently most prominent version of epistemic proceduralism seems to require some revisions, I do not wish to argue here that any specific procedural value should have supreme position in contrast to other procedural values *per se*. (Cf. Estlund who holds that epistemic considerations should always be preferred.) Yet one could maintain, in the same vein as seems typical in the field of conflict management, that the more controversial the cooperative situation is, the more there seems to be reason to focus on interactive justice. (Because epistemic value seems more prone to the effects of disagreement, it also seems relevant to consider practical limitations such as those of knowledge and time constraints in regard to the outcome-oriented deliberation process.) Nonetheless, one should note that intrinsic value is not dependent on the disagreement condition, as Rostbøll (forthcoming) emphasizes. In conflictual situations prioritizing interactive justice and enabling the collaborative process become more pertinent. In more conflictual situations burdened by disagreement the request for intrinsic justification for democratic procedures seems more “substantial” so to speak.¹⁷⁵

¹⁷⁵ The significance of outcome justice and interactive procedural justice can also depend on the context. In some situations, there could even be reasons to make trade-offs between realizing outcome justice and interactive procedural justice (see also Ceva 2016, Ch 3).

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